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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1902~~ 1903.

No ~~447~~ 134.

COSMOPOLITAN MINING COMPANY, PLAINTIFF IN ERROR,

vs.

THOMAS F. WALSH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED OCTOBER 2, 1902.

(18,675.)

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1 *Pleas in the Circuit Court of the United States for the District of Colorado, Sitting at Denver.*

Be it remembered, that heretofore and on, to wit, the 3rd day of November, A. D. 1900, came the Cosmopolitan Mining Company, by Messrs. Perry & Bliss, and George C. Preston, its attorneys, and filed in said court its complaint; and sued out of and under the seal of said court a writ of summons against Thomas F. Walsh.

And the said complaint is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

In the Circuit Court of the United States for the District of Colorado.

COSMOPOLITAN MINING COMPANY, a Corporation, Plaintiff,
vs.
THOMAS F. WALSH, Defendant. } Complaint.

Plaintiff complains of the defendant and for a cause of action it alleges:

2 1. That the plaintiff, Cosmopolitan Mining Company, is a corporation duly organized and existing under and by virtue of the laws of the State of Maine, and is a resident and citizen of the said State of Maine, and the defendant, Thomas F. Walsh, is a resident and citizen of the State of Colorado.

2. That the value of the property involved in this controversy exceeds the sum of two thousand dollars ($2,000.00) exclusive of interest and costs.

3. That on the twenty-fifth day of May, A. D. 1896, the plaintiff was seized in fee and possessed and entitled to the possession of each and all of those certain lode mining claims, mill sites and tracts of land described as follows, viz:

The Hidden Treasure Lode mining claim, U. S. survey No. 548–A; the Hidden Treasure mill site, U. S. mineral survey No. 548–B; the Yellow Rose Lode mining claim U. S. survey No. 576–A; the Yellow Rose mill site U. S. mineral survey No. 576–B; the Emily Lode mining claim, U. S. mineral survey No. 547–A; the Emily mill site, U. S. survey No. 547–B, the Crusader Lode mining claim, U. S. mineral survey No. 575; the Talisman Lode mining claim, U. S. mineral survey, No. 545; the Norma Lode mining claim, U. S. mineral survey No. 546–A; the Norma mill site U. S. mineral survey No. 546–B; the Gertrude Lode mining claim, U. S. mineral survey No. 1548–A, and the Gertrude mill site, U. S. mineral
3 survey No. 1548–B, all situate in Sneffles mining district in the county of Ouray and State of Colorado.

4. That the plaintiff being so possessed, the defendant afterward, to wit, on the twenty-fifth day of May, A. D. 1896, entered into pos-

session of the said demanded premises and ousted the plaintiff therefrom, and now unlawfully and wrongfully withholds the possession thereof from the plaintiff, to its damage in the sum of one hundred thousand dollars ($100,000).

Wherefore plaintiff demands judgment against the defendant for the possession of each of above-described mining claims and premises, and for one hundred thousand dollars ($100,000) damages for withholding possession thereto, and for the costs of this action.

COSMOPOLITAN MINING COMPANY,
By PERRY AND BLISS,
GEORGE C. PRESTON, *Its Attorneys.*

HURLBURT, JONES AND CABOT, *Of Counsel.*

(Endorsed:) 4107.—United States of America.—In the circuit court of U. S., district of Colorado.—Cosmopolitan Mining Company, a corporation, plaintiff *vs.* Thomas F. Walsh, defendant.—Complaint. Filed Nov. 3, 1900, Robert Bailey, clerk.

4 UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the United States Circuit Court for the District of Colorado.

COSMOPOLITAN MINING COMPANY, Plaintiff, *versus* THOMAS F. WALSH, Defendant.	Complaint Filed in the Clerk's Office This 3rd Day of November, A. D. 1900.

The President of the United States of America to the above-named defendant, Greeting:

You are hereby notified that an action has been brought in said court, by Cosmopolitan Mining Company, plaintiff, against you as defendant, to recover the possession of the Hidden Treasure Lode mining claim, the Hidden Treasure mill site, the Yellow Rose Lode mining claim, the Yellow Rose mill site, the Emily Lode mining claim, the Emily mill site, the Crusader Lode mining claim, the Talisman Lode mining claim, the Norma Lode mining claim, the Norma mill site, the Gertrude Lode mining claim, the Gertrude mill site, all situate in Sneffles mining district, Ouray county, Colorado, for the sum of $100,000 as damages for unlawfully withholding possession thereof, and for the costs of suit, as more fully set forth and described in the complaint filed herein and to which reference is here made.

5 You are hereby required to appear and demur or answer to the complaint filed in said action in said court, within ten days (exclusive of the day of service) after this summons shall be served on you, if such service shall be made within the county of Arapahoe; otherwise within forty days from the day of service; and if you fail so to do, the said plaintiff will take judgment against you by default, according to the prayer of the said complaint.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States and the seal of the said circuit court, at the city of Denver, in said district, this 3rd
[SEAL.] day of November, A. D. 1900, and of the Independence of the United States the 125th year.

ROBERT BAILEY, *Clerk.*

Proof of Service.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

DENVER, COLORADO, *Nov.* 20, *A. D.* 1900.

I hereby certify that I received the within writ on the 20 day of Nov. A. D. 1901, and that I have personally served the same upon the said defendant Thomas F. Walsh by delivering to Mrs. Thomas F. Walsh, the wife of the defendant a true copy of this writ,
6 personally, at the time and place as follows: At room 440 in the Brown Palace hotel, Denver, county of Arapahoe on the 20 day of Nov. A. D. 1900.

DEWEY C. BAILEY, *Marshal,*
By MELVIN EDWARDS,
Deputy Marshal.

(Endorsed:) No. 4107.—United States circuit court, for the district of Colorado.—Cosmopolitan Mining Company, plaintiff *versus* Thomas F. Walsh, defendant.—Summons.—George C. Preston of Denver, attorney for plaintiff.—Filed Nov. 21, 1900. Robert Bailey, clerk.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court of the United States within and for the District of Colorado.

THE COSMOPOLITAN MINING COMPANY, a Corporation, Plaintiff,
vs.
THOMAS F. WALSH, Defendant. } Demurrer.

Comes now the defendant in the above-entitled action and demurs to the complaint heretofore filed herein, and for grounds thereof shows unto this honorable court:

7 1. That the said complaint does not state facts sufficient to constitute a cause of action.

2. That the said complaint is ambiguous, unintelligible, and uncertain in this, to wit: That it fails in paragraph three of said complaint to describe the property which it alleges it was the owner of

on the twenty-fifth day of May, A. D. 1896, or with certainty to set out the boundaries and a description of such property.

CHAS. J. HUGHES, JR.,
GERALD HUGHES,
Attorneys for the Defendant.

(Endorsed:) No. 4107, Div. —. In U. S. circuit court.—The Cosmopolitan Mining Company, a corporation *vs.* Thomas F. Walsh.—Demurrer to the complaint.—Filed, Nov. 30, 1900. Robert Bailey, clerk.—Charles J. Hughes, Jr. and Gerald Hughes, attorneys for defendant.

Twenty-sixth day, November term, Saturday, December 8th, A. D., 1900.

Present: The Honorable Moses Hallett, district judge, and the Honorable John A. Riner, district judge of the district of Wyoming, assigned to the district of Colorado, and other officers as noted on the sixth day of November last past. And before the Hon-
8 orable Moses Hallett, district judge, the following proceedings were had.

COSMOPOLITAN MINING COMPANY *vs.* THOMAS F. WALSH. } 4107. Action for Possession of Specific Real Property and for Damages.

At this day comes the plaintiff by George C. Preston, Esquire, its attorney, and the defendant by Gerald Hughes, Esquire, his attorney, also comes.

And the demurrer to the complaint herein coming on now to be heard is argued by counsel and the court having considered the matter and being now fully advised in the premises it seemeth to the court now here that the complaint herein is sufficient in law to be answered unto and so the demurrer is hereby overruled.

And thereupon it is ordered by the court that the defendant answer the complaint herein within twenty (20) days from this day.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States within and for the District of Colorado.

COSMOPOLITAN MINING COMPANY, a Corporation, Plaintiff,
9 *vs.*
THOMAS F. WALSH, Defendant. } Answer.

Comes now the defendant and answering the complaint of the plaintiff herein:

I. For a first defense thereto the defendant denies each and every allegation in said complaint contained.

II. For a second defense and answer to said complaint the de-

fendant alleges that during the months of April and May, A. D. 1895, the A. W. Begole Mercantile Company, John Ashenfelter, P. H. Fennell, and William C. Fulton, commenced their certain action in the county court of Ouray county against the plaintiff herein, and levied attachments upon the property described and set forth in paragraph 3 of said complaint and in said actions judgments were, after a full compliance with all the steps and acts necessary in such cases, as provided in and by the statutes of the State of Colorado with reference thereto, regularly and legally rendered; that on the twenty-third day of July, A. D. 1895, special execution was duly issued out of said county court in the cause in which The A. W. Begole Mercantile Company was plaintiff and The Cosmopolitan Mining Company was defendant, and that thereafter the property, as described and set out in paragraph 3 of the complaint herein, was duly levied upon, advertised, and sold by the then sheriff of Ouray county, to one J. C. Marsh as trustee, and a certificate of purchase was
10 duly and regularly issued to said Marsh in accordance with the statute in such case made and provided.

Second. That afterwards said Marsh, for a valuable consideration, duly assigned said certificate of purchase to Stephen A. Osborn and on May 25, A. D. 1896, the time of redemption having expired, the then sheriff of Ouray county duly executed and delivered to Stephen A. Osborn a sheriff's deed for the premises described in paragraph 3 of the complaint herein.

Third. That on June 16, 1896, the defendant purchased from said Stephen A. Osborn, for a good and valuable consideration, to wit the sum of ten thousand dollars all of the premises, as contained in said sheriff's deed, and being all of the property alleged to be the property of the plaintiff herein, and set out in the complaint herein in paragraph 3 thereof; that said deed from Stephen A. Osborn to Thomas F. Walsh was recorded in the office of the clerk and recorder of Ouray county, Colorado, in Book 62, at page 326 thereof, on the thirtieth day of November, A. D. 1896.

Fourth. That the defendant is now, and ever since the sixteenth day of June, A. D. 1896, has been in the actual, peaceable, and continuous possession of the premises described in the complaint herein, and is the owner in fee thereof and entitled to the possession of the same.

11 III. For a third defense and answer to said complaint, the defendant alleges that the plaintiff is estopped and ought not to have or maintain his aforesaid action for the reason that the plaintiff on or about the first day of January, 1889 abandoned all the property in controversy herein, with the intent to relinquish all of its title to the same; that subsequently actions were duly brought and judgments were secured by divers parties and duly and regularly rendered against the plaintiff in the county court of Ouray county, Colorado, and the property in controversy herein, abandoned as aforesaid, was duly and regularly levied upon and sold to satisfy said judgments, all of which was done with the knowledge and acquiescence of the plaintiff.

Second. That relying upon said abandonment of the property in

controversy herein, by the plaintiff as aforesaid, and relying upon the legality and regularity of the judgments secured as aforesaid, and upon said levy and sale of said property, with the knowledge, acquiescence and consent of the plaintiff, the defendant did by mesne conveyances, for a valuable consideration, to wit, the sum of ten thousand dollars, become, on the sixteenth day of June, A. D. 1896, the owner and entitled to the possession of the property herein in controversy.

Third. That with the full knowledge, acquiescence, consent, and encouragement of the plaintiff, and in reliance upon the
12 abandonment of the property in controvery herein by the plaintiff as aforesaid, and in reliance upon the regularity of the judgments secured against the plaintiff, and upon the execution, levy, and sale of said property as aforesaid, and in reliance upon the validity of all the steps necessary for the maintenance of the defendant's title to said premises, the defendant, immediately after and continuously since the sixteenth day of June, A. D. 1896, when he became the owner and entered upon the possession of said premises, did begin the working and development of said property, paying the taxes upon the same for the years 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, and has expended thereon large sums of money for the purpose of improving said property and rendering it valuable as a mining claim, all of which was done with the knowledge, consent and acquiescence of the plaintiff; that in and about the improvement of said property, and in the development thereof, and for the particular special and permanent benefit of said property, the defendant has, since the sixteenth day of June, A. D. 1896, expended thereon the sum of one hundred twenty-eight thousand, five hundred dollars ($128,500) the same being for the following purposes, to wit:

Underground improvements	$37,000.00
Surface improvements, buildings, mill, tramway, roads, trails, etc	91,500.00
	$128,500.00

13 that said expenditures by the defendant have given to the property in controversy herein all of whatsoever value it may have at the present time, and that without said expenditures, improvements, and developments, made and expended as aforesaid, with the knowledge and acquiescence of the plaintiff, said property would be wholly worthless and of no value whatsoever.

IV. For a fourth defense and answer to said complaint, the defendant alleges:

First. That the plaintiff is estopped and ought not to have or maintain his aforesaid action for the reason that the plaintiff on or about the first day of January, 1889, abandoned all the property in controversy herein, with the intent to relinquish all of its title to the same; that subsequently actions were duly brought and judgments were secured by divers parties and duly and regularly rendered against the plaintiff in the county court of Ouray county,

Colorado, and the property in controversy herein abandoned as aforesaid was duly and regularly levied upon and sold to satisfy said judgments all of which was done with the knowledge and acquiescence of the plaintiff.

Second. That relying upon said abandonment of the property in controversy herein, by the plaintiff as aforesaid, and relying upon the legality and regularity of the judgments secured as
14 aforesaid, and upon said levy and sale of said property, with the knowledge, acquiescence and consent of the plaintiff, the defendant did, by mesne conveyances for a valuable consideration, to wit, the sum of ten thousand dollars, become, on the sixteenth day of June, A. D. 1896, the owner and entitled to the possession of the property herein in controversy.

Third. That being possessed of the property in controversy herein, on the sixteenth day of June, A. D. 1896, as aforesaid, the defendant, with the knowledge and acquiescence of the plaintiff herein, did bring his certain action against The Cosmopolitan Mining Company, the plaintiff herein, on the first day of March, 1897 in the district court of Ouray county, Colorado, to quiet the title to the premises and property in controversy herein, and that in said cause, after said suit was duly and regularly brought, on the eleventh day of May, A. D. 1897, a certain decree in said suit was duly and regularly entered against the plaintiff herein, in and by which said decree it was determined and adjudged that the defendant herein, Thomas F. Walsh, was the owner in fee of the property in controversy herein, and was in and entitled to the quiet and peaceable possession thereof, and that the plaintiff herein, The Cosmopolitan Mining Company, had no right, title, interest, claim, or demand of any kind whatsoever in or to any part of the premises in controversy herein,
15 and that the pretended claim of the Cosmopolitan Mining Company, in and to said premises, was and is wholly without right or justification in law, all of which was done with the knowledge and consent of, and said decree was acquiesced in by The Cosmopolitan Mining Company, the plaintiff herein.

Fourth. That by reason of said above-mentioned action and of the decree and judgment therein, the plaintiff herein, The Cosmopolitan Mining Company, is estopped to claim or set up any right or title whatsoever in and to all or any part of the premises in controversy herein, or to make any claim or demand whatsoever therefor.

Wherefore having fully answered the plaintiff's complaint herein, the defendant prays that he may be hence dismissed, with his costs in this behalf expended.

CHARLES J. HUGHES, Jr.,
Attorney for Defendant.

Jan. 21, 1901.

(Endorsed:) No. 4107.—Div. —. In the U. S. circuit court.—Cosmopolitan Mining Company *vs.* Thomas F. Walsh.—Answer.—Filed Jan. 28, 1901, Robert Bailey, clerk.—Charles J. Hughes, Jr., attorney for defendant.

16 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court.

COSMOPOLITAN MINING COMPANY, Plaintiff, }
vs. } Replication.
THOMAS F. WALSH, Defendant. }

1. Replying to the second defense of the answer herein, plaintiff admits that during the months of April and May, A. D. 1895, the several parties in said second defense mentioned, attempted to commence in the county court of Ouray county, Colorado, the several actions in said second defense mentioned by filing their respective complaints and having issued their respective summons in said several actions; that certain of said parties, to wit, The A. W. Begole Mercantile Company, John Ashenfelter and P. H. Fennell, attempted to levy attachments upon all of the property in controversy herein by filing in the office of the county clerk and recorder of said Ouray county, copies of writs of attachment issued in said actions respectively, together with a description of the property thus sought to be attached; that pretended judgments were attempted to be rendered against the plaintiff herein in all of the actions in said second defense mentioned; that a pretended writ of special execution issued out of said county court in such action in which the said The A. W.
17 Begole Mercantile Company was plaintiff and the plaintiff herein was defendant; that in the action last mentioned, there was a pretended levy under such writ upon all of the property in controversy herein; that in pursuance of such levy there was a pretended sheriff's sale of all of said property to one J. C. Marsh, trustee; that in pursuance of such sale there was issued to the said Marsh a pretended sheriff's certificate of purchase for said property; that in pursuance of such sale and certificate of purchase, there was made, executed and delivered to one Stephen A. Osborne as assignee of the said Marsh, a pretended sheriff's deed for said property; that a certain instrument, purporting to be a deed from the said Osborne to the defendant herein, appears of record in the office of the county clerk and recorder of said Ouray county, Colorado, in the book and on the page alleged by the defendant and that the defendant is now and ever since the 16th day of June, A. D. 1896, he has been in the actual possession of all of the property in controversy herein.

2. Further replying to said second defense plaintiff denies each and every allegation contained therein which is not in this replication to said second defense specifically admitted.

3. Further replying to said second defense plaintiff alleges, that in no one or more of the several actions therein mentioned was any summons or other process, writ of attachment or other writ of said county court of Ouray county, Colorado, served upon any
18 agent of the plaintiff herein, or served in any other way upon the plaintiff herein; that in no one or more of said actions did the plaintiff ever in any way appear, answer, or submit

or in any other manner become subject to the jurisdiction of said county court, or have any notice or knowledge of the commencement or pendency of any one or more of said actions; that in the action in said second defense alleged to have been commenced by the said W. C. Fulton, no writ of attachment, pretended or otherwise was ever attempted to be levied upon the whole or any part of the property in controversy herein; that notwithstanding such failure to levy or attempt to levy upon the whole or any part of said property, said sheriff of Ouray county pretended to sell the whole of said property to satisfy the judgment alleged to have been rendered in the action last mentioned, and returned the execution of such judgment as satisfied by such sale; that such sale was not preceded by the several advertisements and notices required by the statutes of the State of Colorado in such cases made and provided or preceded by any advertisement or notice whatsoever; that at such sale the property in controversy herein was not sold to the highest bidder for cash; that at such sale said property was sold to the said Marsh as trustee for the several plaintiffs in the several actions in said second defense mentioned; that such sale was made in pursuance of a combination, conspiracy, and agreement upon the part of said several plaintiffs and said Marsh
19 that the amount to be bid at such sale should equal and not exceed the aggregate amount of the several pretended judgments of said plaintiffs and upon the further combination, conspiracy and agreement upon the part of the parties aforesaid that the said Marsh should hold the property as trustee for said plaintiffs, and as their several interests should respectively appear; that by reason of such combination, conspiracy, and agreement upon the part of the parties aforesaid, competition and free bidding at such sale did not and could not take place, and that the plaintiffs in the several actions in said second defense mentioned, the said Marsh, the said Osborne, and the defendant herein and each of them, at all times had full notice and knowledge of all and singular the matters set forth in this replication to said se-ond defense.

I.

Replying to the third defense of the answer herein, plaintiff admits that subsequently to the first day of January, A. D. 1889, divers parties attempted to commence the actions and secure the judgments referred to in the first and second paragraphs of said third defense, by filing their respective complaints and having issued their respective summons in said several actions, and that in all of said actions, except the action attempted to be commenced
20 by a certain W. C. Fulton, attempts were made to levy upon all of the property in controversy herein, by filing in the office of the county clerk and recorder of said Ouray county, copies of writs of attachment issued in said actions respectively, together with descriptions of the property thus sought to be attached and that in all of said actions, attempts were made to sell all of the property in controversy herein for the purpose of satisfying such judgments.

2. Further replying to said third defense, plaintiff denies each and every allegation thereof which is not in this replication to said third defense specifically admitted.

3. Further replying to said third defense plaintiff alleges that in no one or more of the several actions referred to in the first and second paragraphs thereof was any summons or other process, writ of attachment or other writ of said county court of Ouray county, Colorado, served upon any agent of the plaintiff herein or served in any other way upon the plaintiff herein; that in no one or more of said actions did the plaintiff ever in any way appear, answer or submit or in any other way become subject to the jurisdiction of said county court, or have any notice or knowledge of the commencement or pendency of any one or more of said actions; that in one of the actions referred to in said paragraphs of said third defense, viz: the action attempted to be commenced by one W. C. Fulton, no writ of attachment, pretended or otherwise, was ever levied
21 or attempted to be levied upon the whole or any part of the property in controversy herein; that notwithstanding such failure to levy or attempt to levy upon said property, said sheriff of Ouray county pretended to sell the whole of said property to satisfy the judgment alleged to have been rendered in the action last mentioned and returned the execution of such judgment as satisfied by such sale; that such sale was not preceded by the several advertisements and notices required by the statutes of the State of Colorado in such cases made and provided, or preceded by any advertisement or notice whatsoever; that at such sale, the property in controversy herein was not sold to the highest bidder for cash; that at such sale said property was sold to the said Marsh as trustee for the several plaintiffs in the several actions referred to in said paragraphs of said third defense; that such sale was made in pursuance of a combination, conspiracy and agreement upon the part of said several plaintiffs and said Marsh, that the amount to be bid at such sale should equal and not exceed the aggregate amount of the several pretended judgments of said plaintiffs and upon the further combination, conspiracy and agreement upon the part of the parties aforesaid, that the said Marsh should hold the property as trustee for said plaintiffs and as their several interests should respectively appear; that
22 by reason of such combination, conspiracy, and agreement upon the part of the parties aforesaid, competition and free bidding at such sale did not and could not take place, and that the plaintiffs in the several actions referred to in said paragraphs of said third defense, the said Marsh, the said Osborne and the defendant herein, and each of them, at all times had full notice and knowledge of all and singular the matters set forth in this replication to said third defense.

1.

Replying to the fourth defense of the answer herein, plaintiff admits that subsequently to the first day of January, A. D. 1889, divers parties attempted to commence the actions and secure the judgments referred to in the first and second paragraphs of said fourth

defense by filing their respective complaints and having issued their respective summons in said several actions, and that in all of said actions except the action attempted to be commenced by a certain W. C. Fulton, attempts were made to levy upon all of the property in controversy herein by filing in the office of the county clerk and recorder of said Ouray county copies of writs of attachment issued in said actions respectively, together with descriptions of the
23 property thus sought to be attached, and that in all of said actions attempts were made to sell all of the property in controversy herein for the purpose of satisfying such judgments, that on the 16th day of June, A. D. 1896, the defendant herein was in the actual possession of said property and that on the date last mentioned the defendant attempted to commence against the plaintiff the action referred to in the third paragraph of said fourth defense by filing his complaint and issuing his summons therein, and that all of the property in controversy herein, except the Norma lode and the Norma mill site, *were* included in the action last mentioned.

2.

Further replying to said fourth defense, plaintiff denies each and every allegation thereof which is not in this replication to said fourth defense specifically admitted.

3.

Further replying to said fourth defense plaintiff alleges that in no one or more of the several actions referred to in the first and second paragraphs thereof, was any summons or other process or writ of attachment or other writ of said county court of Ouray county, Colorado, served upon any agent of the plaintiff herein, or served in any other way upon the plaintiff herein; that in no one or more of said actions did the plaintiff ever in any way appear, answer
24 or submit or in any other manner become subject to the jurisdiction of said county court, or have any notice or knowledge of the commencement or pendency of any one or more of said actions; that in one of the actions referred to in said paragraphs of said fourth defense, viz: the action attempted to be commenced by one W. C. Fulton, no writ of attachment, pretended or otherwise, was ever levied or attempted to be levied upon the whole or any part of the property in controversy herein; that notwithstanding such failure to levy or attempt to levy upon said property, said sheriff of Ouray county pretended to sell the whole of said property to satisfy the judgment alleged to have been rendered in the action last mentioned and returned the execution of such judgment as satisfied by such sale; that such sale was not preceded by the several advertisements and notice required by the statutes of the State of Colorado in such cases made and provided, or preceded by any advertisement or notice whatsoever; that at such sale the property in controversy herein was not sold to the highest bidder for cash; that at such sale said property was sold to the said Marsh as trustee for the several plaintiffs in the several actions referred to in said paragraphs of said fourth

defense; that such sale was made in pursuance of a combination, conspiracy, and agreement upon the part of said several plaintiffs and said Marsh, that the amount to be bid at such sale should equal and not exceed the aggregate amount of the several pretended judgments of said plaintiffs and upon the further combination, conspiracy and agreement upon the part of the parties aforesaid, that the said Marsh should hold the property as trustee for said plaintiffs and as their several interests should respectively appear; that by reason of such combination, conspiracy and agreement upon the part of the parties aforesaid, competition and free bidding at such sale did not and could not take place, and that the plaintiffs in the several actions referred to in said paragraphs of said fourth defense, the said Marsh, the said Osborne and the defendant herein and each of them at all times, had full notice and knowledge of all and singular the matters set forth in this replication to said fourth defense.

4.

Further replying to said fourth defense plaintiff alleges, that in the action referred to in the third and fourth paragraphs thereof, no summons or other process of the district court within and for Ouray county, Colorado, was ever served upon any agent of the plaintiff herein, or served in any other way upon the plaintiff herein, and that in the action last mentioned, the plaintiff herein never in any way appeared, answered, or submitted, or in any other way became subject to the jurisdiction of said district court and had no notice or knowledge of the commencement or pendency of the same.

Wherefore, plaintiff prays for judgment according to the prayer of its complaint herein.

PERRY & BLISS,
GEORGE C. PRESTON,
Attorneys for Plaintiff.

HURLBURT, JONES AND CABOT, *Of Counsel.*

(Endorsed:) No. 4107.—United States of America, district of Colorado.—Cosmopolitan Mining Company, plaintiff, *vs.* Thomas F. Walsh, defendant.—Replication.—Filed Feb. 28, 1901, Robert Bailey, clerk.

10th day, Monday, May 20th, A. D. 1901.

Present: The Honorable Moses Hallett, district judge, and the Honorable John A. Riner, district judge of the district of Wyoming, assigned to the district of Colorado, and other officers as noted on the seventh instant.

And before the Honorable Moses Hallett, district judge, the following proceedings were had:

COSMOPOLITAN MINING COMPANY vs. THOMAS F. WALSH. } 4107. Action for Possession of Specific Real Property and for Damages.

At this day comes the plaintiff by C. M. Bliss, Esquire, its attorney, and thereupon on its motion,

27 It is ordered by the court that the plaintiff may file herein an amendment to its complaint herein instanter.

UNITED STATES OF AMERICA, *District of Colorado*, } *ss:*

In the Circuit Court of the United States, District of Colorado.

COSMOPOLITAN MINING COMPANY, a Corporation, Plaintiff, vs. THOMAS F. WALSH, Defendant. } Amendment to Complaint.

Now comes the plaintiff and leave of the court being first had and obtained, the complaint is amended by striking from the prayer thereof the words and figures "one hundred thousand dollars ($100,000)" and inserting in lieu thereof the words and figures "one dollar ($1.00)" and also by striking therefrom the words "withholding possession thereto" and inserting the words "for unlawfully ousting the plaintiff therefrom."

JOHN A. PERRY,
GEO. C. PRESTON,
C. M. BLISS,
Attorneys for Plaintiff.

(Endorsed:) No. 4107.—U. S. circuit court, district of Colorado.—Cosmopolitan Mining Company, a corporation, plaintiff, *vs.*

28 Thomas F. Walsh, defendant.—Amendment to complaint.—Filed May 20, 1901, Robert Bailey, clerk.

UNITED STATES OF AMERICA, *District of Colorado*, } *ss:*

In the Circuit Court.

THE COSMOPOLITAN MINING COMPANY, Plaintiff, vs. THOMAS F. WALSH, Defendant. }

Amendments to Replication to Second, Third, and Fourth Defenses.

4.

And further replying to the said second defense of the answer herein this plaintiff avers that at, for many years prior to and ever since the commencing of the several actions in said defense particularly mentioned and described, and the service of the writs of summons in said several actions upon J. M. Jardine, plaintiff's supposed agent,

this plaintiff was not, had not been and has not been doing business of any kind or character in the State of Colorado, and that by reason of the actions of the said county court and the sheriff of Ouray county, Colorado, had and done in and in pursuance of said several actions and by defendant in said defense particularly mentioned and
29 described, the plaintiff has been and is being deprived of its property, viz: the property sought to be recovered in this action, without notice, hearing, opportunity to be heard, or due process of law, and in violation of the 14th amendment to the Constitution of the United States.

And further replying to the third defense of the answer herein this plaintiff avers that at, for many years prior to and ever since the commencing of the several actions in said defense particularly mentioned and described, and the service of the writs of summons in said several actions upon J. M. Jardine, plaintiff's supposed agent, this plaintiff was not, had not been, and has not been doing business of any kind or character in the State of Colorado, and that by reason of the actions of the said county court and the sheriff of Ouray county, Colorado, had and done in and in pursuance of said several actions and by defendant in said defense particularly mentioned and described, the plaintiff has been and is being deprived of its property, viz: the property sought to be recovered in this action, without notice, hearing, opportunity to be heard, or due process of law, and in violation of the 14th amendment to the Constitution of the United States.

5.

And further replying to the fourth defense of the answer herein this plaintiff avers that at, for many years prior to and ever since the commencing of the action in said defense particularly
30 mentioned and described, and the service of the writ of summons in said action upon J. M. Jardine, plaintiff's supposed agent, plaintiff was not, had not been, and has not been doing business of any kind or character in the State of Colorado, and that by reason of the actions of the district court of Ouray county, Colorado had and done in and by the defendant in said defense particularly mentioned and described, the plaintiff has been and is being deprived of its property, viz: the property sought to be recovered in this action without notice, hearing, opportunity to be heard, or due process of law and in violation of the 14th amendment to the Constitution of the United States.

PERRY AND BLISS,
GEO. C. PRESTON,
Attorneys for Plaintiff.

(Endorsed:) 4107.—In U. S. circuit court.—Cosmopolitan Mining Company, plaintiff *vs.* Thomas F. Walsh, defendant.—Amendments to replication.—Filed Nov. 23, 1901, Robert Bailey, clerk.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court.

THE COSMOPOLITAN MINING COMPANY, Plaintiff, *vs.* THOMAS F. WALSH, Defendant. } Demurrer. No. 4107.

31 Comes now the defendant by Charles J. Hughes, Jr. and Thomas, Bryant, and Lee, his attorneys, and demurs to the amendment to the replication heretofore filed to the second defense of the answer herein, and for ground of said demurrer the defendant alleges that the said replication as amended as aforesaid, does not state facts sufficient to constitute a cause of action against this defendant. And the defendant demurs to the amendment to the replication heretofore filed to the third defense of the answer herein, and for ground of said demurrer the defendant alleges that the said replication as amended as aforesaid does not state facts sufficient to constitute a cause of action against this defendant. And the defendant demurs to the amendment to the replication heretofore filed to the fourth defense of the answer herein, and for ground of said demurrer the defendant alleges that the said replication as amended as aforesaid, does not state facts sufficient to constitute a cause of action against this defendant.

CHAS. J. HUGHES, JR.
THOMAS, BRYANT & LEE,
Attorneys for Defendant.

(Endorsed:) No. 4107.—In the U. S. circuit court of district of Colorado.—The Cosmopolitan Mining Company, plaintiff *versus* Thomas F. Walsh, defendant.—Demurrer to amendment to replication.—Filed Dec. 2 1901, Robert Bailey, clerk. C. J. Hughes, Jr. and Thomas, Bryant, & Lee, attorneys for defendant 621–627 Ernest & Cranmer bldg., Denver, Colo.

Forty-third day, November term, Monday, January 6th, A. D. 1902.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the 5th day of November last past.

32 COSMOPOLITAN MINING COMPANY *vs.* THOMAS F. WALSH. } 4107. Action for Possession of Specific Real Property and for Damages.

At this day comes the plaintiff by John A. Perry, Esquire, its attorney and the defendant by W. H. Bryant, Esquire, his attorney also comes.

And thereupon the defendant by his attorney saith he will and doth hereby withdraw the demurrer to the amended replication heretofore filed by him herein.

TUESDAY, *February 4th, A. D.* 1901.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the 5th day of November last past.

COSMOPOLITAN MINING COMPANY *vs.* THOMAS F. WALSH. } 4107. Action for Possession of Specific Real Property and for *Damages.*

And this day comes the plaintiff by George C. Preston, Esquire, its attorney, and the defendant by C. S. Thomas, Esquire, his attorney also comes, and the motion to dismiss this cause coming on now to be heard is argued by counsel. And the court having considered the same, and being now fully advised in the premises.

It is ordered by the court for good and sufficient reasons to the court appearing that said motion be and the same is hereby denied.

33 36th day, Thursday, June 19th, A. D. 1902.

Present: The Honorable Moses Hallett, district judge, and the Honorable John A. Marshall, district judge of the district of Utah, assigned to the district of Colorado, and other officers as noted on the sixth day of May last past.

And before the Honorable John A. Marshall, district judge of the district of Utah, assigned to the district of Colorado, the following further proceedings were had:

COSMOPOLITAN MINING COMPANY *vs.* THOMAS F. WALSH. } 4107. Action for Possession of Specific Real Property and for Damages.

At this day comes the plaintiff by George C. Preston, Esquire, John A. Perry, Esquire, and C. M. Bliss, Esquire, its attorneys, and the defendant by C. J. Hughes, Jr. Esquire, and C. S. Thomas Esquire, his attorneys also comes. And thereupon comes a jury, to wit:

Roland G. Parvin, O. F. Baisinger, Fred J. Sterner, Avery R. Thompson, George R. Becker, J. E. Prout, George W. Thompson, L. W. Wells, C. W. White, F. N. Oberling, Fred'k K. Walker and Walter L. Baldridge, twelve good and lawful men and they are each duly selected and tried empanelled and sworn to well and truly try the issues herein joined and a true verdict render according to the evidence.

And thereupon comes the evidence the hearing of which is continued to the hour of adjournment.

34 And the said jurors being now each duly cautioned by the court not to converse among themselves or with others touching this cause or the matters at issue herein or the evidence heard or any part thereof nor to listen to such conversation of others, are permitted to retire to meet the court at its next incoming.

COSMOPOLITAN MINING COMPANY *vs.* THOMAS F. WALSH.	4104. Action for Possession of Specifie Real Property and for Damages.

At this day comes the plaintiff by George C. Preston, Esquire, its attorney and the defendant by C. S. Thomas Esquire, his attorney, also comes.

And thereupon on motion of defendant, it is ordered by the court that he have leave to file herein an amendment to his answer.

37th day, Friday, June 20th, A. D. 1902.

Present: The Honorable Moses Hallett, district judge, and the Honorable John A. Marshall, district judge of the district of Utah, assigned to the district of Colorado, and other officers as noted on the sixth day of May last past. And before the Honorable John A. Marshall, district judge of the district of Utah assigned to the district of Colorado the following proceeding was had:

35	COSMOPOLITAN MINING COMPANY *vs.* THOMAS F. WALSH.	4107. Action for Possession of Specific Real Property and for Damages.

At this day come again the said parties by their attorneys respectively and the said jurors being now all here present and in the jury-box the trial herein is resumed.

And the said jurors having heard the evidence produced herein, and being thereunto duly instructed by the court, upon their oath do say, they find the issues herein joined in favor of the defendant and that he is entitled to the possession of the demanded premises.

39th day, Monday, June 23d, A. D. 1902.

Present: The Honorable Moses Hallett, district judge, and the Honorable John A. Marshall, district judge of the district of Utah, assigned to the district of Colorado, and other officers as noted on the sixth day of May last past.

And before the Honorable John A. Marshall, district judge of the district of Utah assigned to the district of Colorado, the following proceedings were had:

36	COSMOPOLITAN MINING Company *vs.* THOMAS F. WALSH.	4107. Action for Possession of Specific Real Property and for Damages.

At this day comes the plaintiff by G. C. Preston, Esquire, its attorney, and the defendant by C. S. Thomas, Esquire, his attorney, also comes. And the motion of the plaintiff for a new trial of the issues herein joined coming on now to be heard is submitted to the court and the court having considered the same and being now fully advised in the premises.

It is ordered by the court for good and sufficient reasons to the court appearing that said motion be and the same is hereby denied. And bond on writ of error will be in the sum of five hundred dollars ($500).

Wherefore, it is considered by the court upon the verdict of the jury herein, that the defendant go hence hereof without day, and have and recover of and from the plaintiff his costs by him in this behalf laid out and expended, to be taxed, and have execution therefor.

37 FRIDAY, *September 12th, A. D.* 1902.

At chambers before the Honorable John A. Marshall, district judge of the district of Utah, assigned to the district of Colorado the following proceeding was had:

COSMOPOLITAN MINING COMPANY vs. THOMAS F. WALSH. } 407. Action for Possession of Specific Real Property and for Damages.

For good cause shown, it is hereby ordered that the return day of the citation on writ of error to the Supreme Court of the United States in this cause, be and the same is hereby enlarged for thirty (30) days.

In the Circuit Court of the United States for the District of Colorado.

COSMOPOLITAN MINING COMPANY, Plaintiff, Plaintiff in Error,
38 vs.
THOMAS F. WALSH, Defendant, Defendant in Error. } No. 4107.

Petition for Writ of Error to the Supreme Court of the United States.

To the Honorable John A. Marshall, judge of the district court of the United States for the district of Utah, assigned to hold the circuit court of the United States for the district of Colorado:

The petition of The Cosmopolitan Mining Company, plaintiff, and plaintiff in error, shows unto your honor that in the pleadings in this action, as well as in the rulings of your honor in admitting and refusing evidence and in giving and refusing to give the instructions set forth in the assignment of errors hereto annexed, there were involved the application and construction of the Constitution of the United States, viz., of that part of the fourteenth amendment to the same which provides for due process of law, and that your petitioner feels aggrieved by the verdict of the jury and the judgment of this honorable court rendered on the 23rd day of June, A. D. 1902.

Wherefore your petitioner prays that it may be allowed to prosecute a writ of error to the honorable Supreme Court of the United States under and according to the laws of the United States
39 in that behalf made and provided; that the bond submitted herewith be approved, and that upon the allowance of this

petition and the approval of said bond all further proceedings in this action in this court be suspended and stayed until the determination of said writ of error by the said Supreme Court of the United States.

And your petitioner will ever pray.

PERRY AND BLISS AND
GEORGE C. PRESTON,
Attorneys for Plaintiff in Error.

(Endorsed:) No. 4107.—U. S. circuit court, district of Colorado.—Cosmopolitan Mining Company *vs.* Thomas F. Walsh.—Petition for writ of error, U. S. S. C.—Filed Aug. 18, 1902, Robert Bailey, clerk.—Perry and Bliss and George C. Preston, attorneys for plaintiff.

In the Circuit Court of the United States for the District of Colorado.

COSMOPOLITAN MINING COMPANY, Plaintiff, Plaintiff in Error,
vs.
THOMAS F. WALSH, Defendant, Defendant in Error. } No. 4107.

Certificate of Judge.

I, John A. Marshall, United States district judge for the
40 district of Utah, assigned to hold the circuit court of the United States for the district of Colorado, before whom the above-entitled action was tried and judgment rendered on June 23, 1902, do hereby certify that in the pleadings in this action as well as in the rulings of this court in admitting and refusing to admit evidence and in giving and refusing to give instructions to the jury as set forth in the assignment of errors hereto annexed, there were involved the application and construction of the Constitution of the United States, viz: of the part of the fourteenth amendment to the same which provides for due process of law.

Witness my hand and seal at Denver, Colorado, this 15th day of August, 1902.

J. A. MARSHALL,
U. S. Dist. Judge for the District of Utah, Assigned to Hold the Circuit Court of the United States for the District of Colorado.

(Endorsed:) No. 4107.—U. S. circuit court, district of Colorado.—Cosmopolitan Mining Company *vs.* Thomas F. Walsh.—Judge's certificate.—Filed Aug. 18, 1902, Robert Bailey, clerk.—Perry & Bliss, and George C. Preston, attorneys for plaintiff.

41 In the Circuit Court of the United States for the District of Colorado.

COSMOPOLITAN MINING COMPANY, Plaintiff, Plaintiff in Error,
v.
THOMAS F. WALSH, Defendant, Defendant in Error.

No. 4107.
Assignment of Errors.

Now comes the plaintiff in error, by Messrs. Perry and Bliss, and George C. Preston, Esquire, its attorneys, and files the following assignment of the errors upon which it will rely in prosecuting its writ of error from the Supreme Court of the United States reviewing the judgment in the above-entitled cause, viz:

1. The United States circuit court in and for the district of Colorado erred in overruling the objection of the plaintiff in error to the introduction in evidence at the trial of said cause of Defendant's Exhibit No. 5 consisting of a certified copy from the county clerk and recorder of Ouray county, Colorado, of the alleged designation of Ouray, in said county, as the principal place where the business of the plaintiff in error was to be carried on, and of one J. M. Jardine as the authorized agent of the plaintiff in error upon whom process might be served.

2. The United States circuit court in and for the district of Colorado erred in overruling the objection of the plaintiff in error to the introduction in evidence at the trial of said cause of Defendant's Exhibit No. 6 consisting of a certified copy from the secre-
42 tary of state of the State of Colorado of an alleged duplicate of Defendant's Exhibit No. 5.

3. The United States circuit court in and for the district of Colorado erred in overruling the objection of the plaintiff in error to the introduction in evidence at the trial of said cause of the certificate contained in Defendant's Exhibit No. 5 that it did not appear from the records of the office of said county clerk and recorder that the alleged authority contained in Defendant's Exhibit No. 5 had ever been revoked.

4. The United States circuit court in and for the district of Colorado erred in overruling the objection of the plaintiff in error to the introduction in evidence at the trial of said cause of Defendant's Exhibit No. 7, consisting of a certificate from the secretary of state of the State of Colorado that it did not appear from the records of his office that the alleged authority contained in Defendant's Exhibit No. 6 had ever been revoked.

5. The United States circuit court in and for the district of Colorado erred in overruling the objection of the plaintiff in error to the introduction in evidence at the trial of said cause of any part of the record in the case in the district court of Ouray county, Colorado, wherein Thomas F. Walsh was plaintiff and Cosmopolitan Mining Company and J. M. Jardine were defendants, said record being

designated as Defendant's Exhibit 13 and consisting of cer-
43 tified copies of the complaint, the answer of the said J. M. Jardine, the writ of summons and the return indorsed thereon, the præcipe for a default, the order of default, the transcript of the judgment docket and the decree in the action last above mentioned.

6. The United States circuit court in and for the district of Colorado erred in overruling the objection of the plaintiff in error to the introduction in evidence at the trial of said cause of Defendant's Exhibit No. 1, consisting of a certified copy of a sheriff's deed dated May 26, 1896, and purporting to be issued in pursuance of the judgment and proceedings in the case in the county court of Ouray county, Colorado, wherein the A. W. Begole Mercantile Company was plaintiff and Cosmopolitan Mining Company was defendant (Defendant's Exhibits Nos. 9, 10, and 19) to convey to one Stephen A. Osborne the real property in controversy in this cause.

7. The United States circuit court in and for the district of Colorado erred in overruling the objection of the plaintiff in error to the introduction in evidence at the trial of said cause of any part of the record in the case in the county court of Ouray county, Colorado, wherein John Ashenfelter was plaintiff and Cosmopolitan Mining Company was defendant, said record being designated as Defendant's Exhibit 8, consisting of certified copies of the order of default and judgment and of the transcript of the judgment docket, and as Defendant's Exhibit 20, consisting of certified cop-
44 ies of the complaint, affidavit in attachment, undertaking in attachment, the summons and return thereon, the writ of attachment issued to the sheriff of San Miguel county, Colorado, and return thereon, writ of special execution and return thereon, and præcipe for writ of special execution in the case last above mentioned.

8. The United States circuit court in and for the district of Colorado erred in overruling the objection of the plaintiff in error to the introduction in evidence at the trial of said cause of any part of the record offered by the defendant in the case in the county court of Ouray county, Colorado, wherein The A. W. Begole Mercantile Company was plaintiff and Cosmopolitan Mining Company was defendant, said record being designated as Defendant's Exhibit 9 and consisting of certified copies of the order of default and judgment and of the transcript of the judgment docket, as Defendant's Exhibit 10, consisting of præcipe for special execution, writ of attachment issued to the sheriff of Ouray county, Colorado, and return thereon, and as Defendant's Exhibit 19, consisting of certified copies of the complaint undertaking in attachment, affidavit in attachment, summons and return thereon, writ of attachment issued to the sheriff of San Miguel county, Colorado, and return thereon, præcipe for default, writ of special execution and return thereon, and prorating order in the case last above mentioned.

45 9. The United States circuit court in and for the district of Colorado erred in overruling the objection — the plaintiff in error to the introduction in evidence at the trial of said cause of any part of the record in the case of the county court of Ouray county,

Colorado, wherein P. H. Fennel was plaintiff and Cosmopolitan Mining Company was defendant, said record being designated as Defendant's Exhibit 11, consisting of certified copies of the order of default and judgment and of the transcript of the docket judgment and Defendant's Exhibit 21, consisting of certified copies of the complaint, undertaking in attachment, affidavit in attachment, summons and return thereon, writ of attachment issued to the sheriff of San Miguel county, Colorado, and return thereon, writ of attachment issued to the sheriff of Ouray county, Colorado, and return thereon, writ of special execution and return thereon, and præcipe for special execution in the case last above mentioned.

10. The United States circuit court in and for the district of Colorado erred in sustaining the objection of the defendant in error to the introduction in evidence at the trial of said cause of the certified copy of the notice and motion filed by J. M. Jardine in the case in the county court of Ouray county, Colorado, wherein the A. W. Begole Mercantile Company was plaintiff and Cosmopolitan Mining Company was defendant (Defendant's Exhibits Nos. 9, 10, and 19) said notice and motion being designated as Plaintiff's
46 Exhibit R.

11. The United States circuit court in and for the district of Colorado erred in sustaining the objection of the defendant in error to the introduction in evidence of the answer to the question propounded to the witness Story as to whether there were any agents of the Cosmopolitan Mining Company in Ouray county, Colorado, other than J. M. Jardine, the alleged statutory agent of said company, at the time of the institution of the action in the district court of said Ouray county, Colorado, wherein Thomas F. Walsh was plaintiff and Cosmopolitan Mining Company was defendant (Defendant's Exhibit No. 13).

12. The United States circuit court in and for the district of Colorado erred in ruling that it was incompetent for the plaintiff in error to prove at the trial of said cause that the plaintiff in error was not doing business in the State of Colorado, except by having a statutory agent at the time of the institution of the action in the district court of Ouray county, Colorado, wherein Thomas F. Walsh was plaintiff and Cosmopolitan Mining Company was defendant (Defendant's Exhibit No. 13).

13. The United States circuit court in and for the district of Colorado erred in sustaining the objection of the defendant in error to the introduction in evidence at the trial of said cause of the
47 answer to the question propounded to the witness Story as to whether there was any office of the Cosmopolitan Mining Company in Ouray county, Colorado, at the time of the institution of the action in said district court of said Ouray county, wherein Thomas F. Walsh was plaintiff and Cosmopolitan Mining Company was defendant (Defendant's Exhibit No. 13).

14. The United States circuit court in and for the district of Colorado erred in refusing to grant the prayer of the plaintiff directing the jury to return a verdict for the plaintiff.

15. The United States circuit court in and for the district of Colorado erred in giving the following instructions to the jury viz:

The COURT: Gentlemen of the jury, in the view the court takes of this case it becomes a question of law and the court will instruct you to find a verdict in favor of the defendant and that the defendant is entitled to the possession of the demanded premises.

16. The United States circuit court in and for the district of Colorado erred in overruling the motion of the plaintiff for a new trial.

17. The judgment of the United States circuit court in and for the district of Colorado in this cause is contrary to law.

18. The verdict of the jury rendered in this case in the United States circuit court in and for the district of Colorado is contrary to the law and the evidence in the case.

19. The United States circuit court in and for the district
48 of Colorado erred in not rendering judgment for the plaintiff, notwithstanding the verdict of the jury.

To each and all of which rulings of said United States circuit court in and for the district of Colorado the plaintiff by its counsel then and there duly excepted.

Wherefore the plaintiff in error prays that the judgment of said United States circuit court in and for the district of Colorado may be reversed by the Supreme Court of the United States.

PERRY AND BLISS AND
GEORGE C. PRESTON,
Attorneys for Plaintiff in Error.

(Endorsed:) No. 4107.—U. S. circuit court, district of Colorado.—Cosmopolitan Mining Company *vs.* Thomas F. Walsh.—Assignment of errors.—Filed Aug. 18, 1902. Robert Bailey, clerk.—Perry and Bliss and George C. Preston, attorneys for plaintiff.

In the Circuit Court of the United States for the District of Colorado.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

COSMOPOLITAN MINING COMPANY, Plaintiff,
v.
THOMAS F. WALSH, Defendant. } No. 4107.

49 Be it remembered, that this cause having on this 19th day of June, 1902, come regularly on for trial before the court and a jury duly empanelled and sworn the plaintiff having appeared by Messrs. Perry and Bliss and George C. Preston, its attorney-, and the defendant having appeared by Messrs. C. J. Hughes, Jr. and C. S. Thomas, his attorneys, and the Honorable John A. Marshall presiding, the plaintiff, to maintain the issues on its part, offered in evidence the following documents viz:—

EXHIBIT A.

Patent of United States of America, dated February 28, 1883, recorded July 23, 1883, in Book 8 page 214 of the records of Ouray county, Colorado, and granting and conveying to the Allied Mines, its successors and assigns, the Emily lode and mill site in Mount Sneffles mining district, county and State aforesaid.

EXHIBIT B.

Patent of the United States of America, dated March 15, 1883, recorded May 18, 1883, in Book 8, page 183, of the records of Ouray county, Colorado, granting and conveying to the Allied Mines, its successors and assigns the Crusader lode, situated in the mining district, county and State aforesaid.

EXHIBIT C.

Patent of the United States of America, dated February 28,
50 1883, recorded July 23, 1883, in Book 8, at page 206, of the records of Ouray county, Colorado, and granting and conveying to the Allied Mines, its successors and assigns, the Hidden Treasure lode and mill site, situate in the mining district, county and State aforesaid.

EXHIBIT D.

Patent of the United States of America, dated February 28, 1883, recorded July 23, 1883, in Book 8, page 202, of the records of Ouray county, Colorado, granting and conveying to the Allied Mines, its successors and assigns, the Talisman lode, situate in the mining district, county and State aforesaid.

EXHIBIT E.

Patent of the United States of America, dated February 28, 1883, recorded July 23, 1883, in Book 8, page 210 of the records of Ouray county, Colorado, and granting and conveying to the Allied Mines, its successors and assigns, the Norma lode and mill site, situate in the mining district, county and State aforesaid.

EXHIBIT F.

Patent of the United States of America, dated April 16, 1883, recorded May 18, 1883, in Book 8 at page 186, of the records of Ouray county, Colorado, and granting and conveying to the Allied Mines, its successors and assigns, the Yellow Rose lode and mill site, situate in the mining district, county and State aforesaid.

EXHIBIT G.

51 Patent of the United States of America, dated October 15, 1884 recorded January 8, 1885, in Book 32, at pages 37 to 40, inclusive, of the records of Ouray county, Colorado, and granting and conveying to Thomas Sanders, his heirs and assigns, the Gertrude lode and mill site, situate in the mining district, county and State aforesaid.

EXHIBIT H.

Certified copy of articles of incorporation of the Allied Mines signed by the secretary of state and under the great seal of the State of New York, said articles being dated January 10, 1880, and the certificate of said secretary of state being dated May 22, 1901.

EXHIBIT I.

Certified copy of mortgage of the Allied Mines to the Farmers' Loan and Trust Company, certificate signed by the county clerk and recorder and under the seal of the county of Ouray, in the State of Colorado; mortgage dated October 1, 1881, recorded October 19, 1881, in Book 13, at page 347, of the records of Ouray county, Colorado, conveying to the mortgagee the several lodes and mill sites respectively described in Exhibits A to G both inclusive, to secure the payment of an issue of bonds aggregating $300,000 certificate of the county clerk and recorder dated May 18, 1901.

EXHIBIT J.

Certified copy of the special acts incorporating and of all acts relating to the Farmers' Loan and Trust Company; certificate
52 signed by the secretary of state, and under the great seal of the State of New York, original incorporating act bearing date February 28, 1822, and the other acts relating to said corporation bearing date April 17, 1822, April 30, 1836, March 30, 1852, April 10, 1860, April 27, 1868, April 30, 1870, May 13, 1880, May 4, 1890, and April 24, 1901, respectively; certificate of said secretary of state bearing date June 14, 1901.

EXHIBIT K.

Transcript of proceedings in the case of The Farmers' Loan and Trust Company *vs.* Allied Mines; transcript signed by the clerk and under the seal of the district court of Arapahoe county, Colorado, consisting of (1) complaint filed October 5, 1882, setting out *in hæc verba* and praying for the foreclosure of Exhibit I; (2) general appearance of the Allied Mines by Henry T. Rogers, Esquire, its attorney, filed October 10, 1882; (3) interlocutory decree ordering the foreclosure of Exhibit I and appointing and directing special com-

missioner to make sale of all of the lodes and mill sites described therein, prayed for by the plaintiff, expressly consented to by the defendant and dated March 28, 1882; (4) report of the special commissioner dated December 22, 1882, showing the foreclosure of Exhibit I and sale of all lodes and mill sites therein mentioned to Thomas Sanders of Haverhill, Massachusetts, for the sum of
$214,666.66 in pursuance of interlocutory decree of court, and
53 (5) final decree dated December 22, 1882, confirming said
sale to said Sanders and reciting Exhibit L (hereinafter particularly described) has been presented for the court's inspection and ordering the execution and delivery of said Exhibit L to the said Sanders; certificate of said clerk of the district court dated June 12, 1901.

EXHIBIT L.

Certified copy of the deed of Amos Steck, special commissioner, in the case of The Farmers' Loan and Trust Company *vs.* Allied Mines; deed dated December 21, 1882, recorded May 5, 1883, in Book 21, page 268, of the records of Ouray county, Colorado, consideration $214,666.66 and granting and conveying to Thomas Sanders, his heirs and assigns, all of the right, title, and interest benefit and equity of redemption of the Allied Mines in the several lodes and mill sites respectively described in Exhibits A to G, both inclusive, certificate dated May 18, 1901, and signed by the clerk and recorder and under the seal of the county of Ouray in the State of Colorado.

EXHIBIT M.

Certified copy of mining deed of Thomas Sanders of Haverhill, Massachusetts; deed dated June 24, 1884, recorded July 17, 1884, in Book 31, page 64, of the records of Ouray county, Colorado; consideration five dollars and granting and conveying to
54 Hiram Knowlton of Portland, Maine, and to his heirs and
assigns, the several lodes and mill sites respectively described in Exhibits A to G both inclusive certificate dated May 18, 1901 and signed by the clerk and recorder and under the seal of the county of Ouray in the State of Colorado.

EXHIBIT N.

Certified copy of mining deed of Hiram Knowlton; deed dated July 3, 1884, recorded July 25, 1884, in Book 31, page 70, of the records of Ouray county, Colorado, consideration good and valuable and granting and conveying to the Cosmopolitan Mining Company and to its assigns the several lodes and mill sites respectively described in Exhibits A to G both inclusive; certificate dated May 18, 1901, and signed by the county clerk and recorder and under the seal of the county of Ouray, in the State of Colorado.

EXHIBIT O.

STATE OF MAINE:

Certificate of Organization of a Corporation under the General Law.

The undersigned, officers of a corporation organized at Portland at a meeting of the signers of the articles of agreement therefor, duly called and held *and* 31½ Exchange street at the office of H. and W. J. Knowlton in the city of Portland on Thursday the twenty-sixth day of June A. D. 1884, hereby certify as follows: The name of said corporation is the Cosmopolitan Mining Company.

The purposes of said corporation are buying, owning, selling, leasing, working, developing and improving, gold, silver, copper or other mines and purchasing and holding such other property as may be necessary or convenient.

55 The amount of capital stock is one million dollars.

The amount of capital stock already paid in is sixty-six (66) —.

The par value of the shares is one dollar each.

The names and residences of the owners of said shares are as follows:

Names.	Residence.	No. of shares.
Thomas Sanders.....	Haverhill, Mass.....	50 shares.
George V. Ladd.....	" "	15 "
William J. Knowlton.....	Portland, Me.....	1 "

Said corporation is located at Portland in the county of Cumberland. The number of directors is three, and their names are Thomas Sanders, George V. Ladd and William J. Knowlton. The name of the clerk is —— —— and his residence is ——. The undersigned, Thomas Sanders, is president; the undersigned, George V. Ladd is treasurer; and the undersigned, Thomas Sanders and George V. Ladd are a majority of the directors of said corporation.

Witness our hands this twenty-sixth day of June, A. D. 1884.

THOMAS SANDERS, *President.*
GEORGE V. LADD, *Treasurer.*
THOMAS SANDERS,
GEORGE V. LADD, *Directors.*

CUMBERLAND, *ss:*

JUNE 26TH, A. D. 1884.

Then personally appeared Thomas Sanders and George V. Ladd, and severally made oath to the foregoing certificate, that the same is true.

Before me,

WILLIAM J. KNOWLTON,
Justice of the Peace.

56 STATE OF MAINE,
ATTORNEY GENERAL'S OFFICE, *June* 30, *A. D.* 1884.

I hereby certify that I have examined the foregoing certificate and the same is properly drawn and signed, and is conformable to the constitution and laws of the State.

HENRY B. CLEAVES,
Attorney General.

(All of which was duly certified by the secretary of state of the State of Maine, and was duly endorsed upon the back thereof.)

EXHIBIT P.

Certified copy of certified copy of articles of incorporation of the Allied Mines and of all the general acts of the State of New York in relation to corporations, viz. acts passed February 17, 1848, February 7, 1851, June 7, 1853, April 13, 1854, April 12, 1855, February 16, and April 6, 1857, April 11, 1860, and April 12, 1861.

Certified copy of certified copy dated June 18, 1901, and signed by the secretary of state and under the great seal of the State of Colorado. Certified copy thus certified purports to be dated January 21, 1880, to be signed by the secretary of state and to be under the great seal of the State of New York, and to have been filed in the office of the secretary of State of the state of Colorado on the 29th day of March, 1880.

EXHIBIT Q.

57 Certified copy of certified copy of articles of incorporation of the Cosmopolitan Mining Company and of the general acts of the State of Maine in relation to corporations, viz: Revised Statutes, chapter 46, sections 1 to 57, both inclusive; chapter 361, Laws of 1885, Revised Statutes, chapter 48, sections 1 to 20, both inclusive. Certified copy of certified copy dated June 17, 1901, and signed by the secretary of state and under the great seal of the State of Colorado. Certified copy thus certified purports to be dated November 25, 1885, and to be signed by the secretary of state and to be under the great seal of the State of Maine and to have been filed in the office of the secretary of State of the state of Colorado on February 10, 1886.

Thereupon the defendant by his counsel made the following objection, viz:

Mr. THOMAS: We object to this testimony, if your honor please, for the reason that no proof is offered in connection with this, showing a compliance by the plaintiff corporation with the requirements of the law of the State which would permit it to do business here. Under both the constitution and statutes, before any foreign corporation is permitted to do business in this State, it must appoint its agent, designate its place of business, and nothing of that
58 kind has been shown and therefore we object to the reception of this testimony as standing of itself and proving nothing and not entitling the plaintiff to be heard in this action.

Which objection the court overruled and to which ruling the defendant by his counsel then and there duly excepted.

There being no further objection to said documents they were received and read in evidence.

Thereupon counsel for the plaintiff and defendant respectively made the following statements and admissions in open court in relation to the citizenship of the defendant, viz:

Mr. PERRY: If your honor please, we would like to have it appear in the record that it is admitted that Mr. Walsh is a citizen and resident of this State and was a citizen and resident of this State at the time of the bringing of this suit and prior thereto.

Mr. THOMAS: Yes, there is no doubt about that.

Thereupon plaintiff rested.

Thereupon the defendant by his counsel made the following motion:

Mr. TMOMAS: If the court please, in order to protect our rights in the matter, we move to take the case from the jury and nonsuit the defendant because it has failed to make full compliance with
59 the statutes in the matters we have just suggested in our objection—that is to say, they have failed to show the appointment made and the filing of the certificate.

Which motion the court denied.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon the defendant, to maintain the issues on his part, offered in evidence certified copy of a sheriff's deed in words and figures following, viz:

EXHIBIT 1.

Sheriff's Deed on Execution, Colorado.

Whereas, The A. W. Begole Mercantile Company did, at the May term, A. D. eighteen hundred and ninety-five of the county court for the county of Ouray and State of Colorado, recover a judgment against The Cosmopolitan Mining Company, a corporation for the sum of two hundred twenty-six and 09/100 dollars, and the costs of suit, upon which judgment an execution was issued, dated on the 23rd day of July, A. D. eighteen hundred and ninety-five directed to the then sheriff of Ouray county to execute, and by virtue of such

execution, Maurice Corbett then sheriff of said county, levied upon the lands hereinafter described, and the same were struck off and sold to John C. Marsh, trustee, he being the highest and best bidder therefor, and the time and place of the sale thereof having been duly advertised according to law.

And the said John C. Marsh having duly assigned his certificate of purchase to Stephen A. Osborne on Jan'y 4th, 1896, as appears from the record of said certificate of sale and the assignment thereof to be found in Book 25, at page 358, of the records of Ouray county.

60 Now, therefore, know all by this deed, that I, William J. Benton the present sheriff of said county of Ouray in the State of Colorado in consideration of the premises, have granted, bargained and sold, and do hereby convey to the said Stephen A. Osborne of the city of Denver and State of Colorado his heirs and assigns, the following-described tract or tracts of land, to wit: The Yellow Rose Lode mining claim, the Crusader Lode mining claim, the Norma Lode mining claim, the Talisman Lode mining claim, the Hidden Treasure Lode mining claim, the Gertrude Lode mining claim, and the Emily lode mining claim, together with the several mill sites, patented in connection with said lode mining claims and each of them. All situated in Imogene basin in Mt. Sneffles mining district, in the county of Ouray and State of Colorado, being the premises particularly described in that certain deed of conveyance executed by one Thos. F. Wentworth to the Cosmopolitan Mining Company on July 8th, 1890, which deed is of record in the office of the clerk and recorder of Ouray county aforesaid in Book 57 at page 240.

To have and to hold the said described premises, with all the appurtenances thereunto belonging, to the said Stephen A. Osborne, his heirs and assigns, forever.

Witness my hand and seal this 26th day of May in the year of our Lord one thousand eight hundred and ninety-six.

(Signed) WILLIAM J. BENTON, [SEAL.]
Sheriff of Ouray County.

(The foregoing document was endorsed as follows:)

No. 41049.

Sheriff's Deed.

—— ——, sheriff of —— county,
to
—— ——.

STATE OF COLORADO, }
Ouray County, } *ss:*

61 I hereby certify that this deed was filed for record on the 29 day of May, 1896, at 11.10 o'clock a. m. and duly recorded in Book 68, page 284.

RALPH WILLIAMS, *Recorder.*

Fees, $——.

(In red ink were the words "Certified copy.")

Said deed was duly acknowledged and certified.

Thereupon plaintiff by its counsel made the following objection: Plaintiff objects to Defendant's Exhibit 1, viz: the sheriff's deed to Stephen A. Osborn, on the grounds following:

1. That such deed is incompetent, irrelevant, and immaterial.

2. That such deed has been issued in pursuance of alleged judgments of the county court of Ouray county, Colorado; that such alleged judgments are to be considered as foreign judgments in this court; that the provisions of the statutes of Colorado that sheriff's deeds shall be evidence that the provisions of the law in relation to sales of land upon execution are complied with (M. A. S. sec. 2555) are not applicable to this court and that such statutes do not provide that such shall be evidence that the court which rendered the judgments in pursuance of which it was issued had jurisdiction of
the person or the subject-matter of the action or evidence of
62 any matter except the regularity of the proceedings of the
sheriff subsequent to the rendition of the judgment.

3. That it appears from the uncontested evidence in the case at bar that the plaintiff is a foreign corporation, that it nowhere appears in said sheriff's deed or in the recital of the judgment referred to therein that the plaintiff appeared or otherwise submitted to the jurisdiction of the court which rendered the judgments upon which such deed is based or that it was doing business in the State of Colorado when any supposed agent was served with process or that the court acquired jurisdiction of the defendant by personal or other service of process.

Which objection was sustained by the court.

To which ruling of the court in sustaining said objection the defendant by his counsel then and there duly excepted.

The defendant thereupon further to maintain the issues on his part offered in evidence the following documents, viz:—

EXHIBIT 2.

Mining deed of Stephen A. Osborne of Arapahoe county, Colorado, dated June 16, 1896, recorded November 30, 1896, in Book 62, at page 326, of the records of Ouray county, Colorado; consideration $10,000 and granting and conveying unto Thomas F. Walsh of the
county of Arapahoe and State of Colorado the several lodes
63 and mill sites respectively described in Exhibits A to G, both
inclusive.

EXHIBIT 3.

Tax deed from the treasurer of Ouray county, Colorado, dated August 31, 1900, recorded September 5, 1900, in Book 74, page 321, of the records of Ouray county, Colorado, conveying to Thomas F. Walsh the Norma mill site, survey number 547–B.

EXHIBIT 4.

Tax deed from the treasurer of Ouray county, Colorado, dated August 31, 1900, recorded September 5, 1900, in Book 74, page 322, of the records of Ouray county, Colorado, conveying to Thomas F. Walsh the Yellow Rose mill site, survey number 576-B.

Thereupon the plaintiff by its counsel objected to Exhibits 3 and 4 on the ground that they were not pleaded and that the evidence thus offered was at variance with defendant's pleadings and therefore inadmissible.

Which objection was overruled by the court; to which action of the court in overruling said objection the plaintiff by its counsel then and there duly excepted.

Thereupon the defendant further to maintain the issues upon his part offered in evidence the following documents, viz:—

EXHIBIT 5.

Duplicate.

Office of the Cosmopolitan Mining Company.

PORTLAND, ME., *Dec. 16th*, 1885.

64 In compliance with the requirements of the laws of the State of Colorado, the president and secretary of the Cosmopolitan Mining Company of Portland, Maine, hereby certify that said company has designated Ouray in the county of Ouray in said State of Colorado as the principal place where the business of said corporation is to be carried on in said State of Colorado and J. M. Jardine, Esquire, was designated as the authorized agent of said company upon whom process may be served.

In witness whereof the president and secretary have hereunto set our hands the day and year above written.

[Seal Cosmopolitan Mining Company, Organized A. D. 1884.]

AARON H. CRAGIN, *President.*
WILLIAM J. KNOWLTON, *Secretary.*

(All of which was duly acknowledged, and certified by the clerk and recorder of Ouray county, Colorado, who also certified that the same had been duly filed in his office and had never been revoked.)

EXHIBIT 6.

Office of the Cosmopolitan Mining Company,

PORTLAND, ME., *Dec. 16th*, 1885.

In compliance with the requirements of the laws of the State of Colorado the president and secretary of the Cosmopolitan Mining Company of Portland Maine hereby certify that said company has designated Ouray in the county of Ouray in said State of Colorado as the principal place where the business of said corporation is to be

carried on in said State of Colorado and J. M. Jardine, Esquire was designated as the authorized agent of said corporation upon whom process may be served.

In witness whereof the president and secretary have hereunto set our hands the day and year above written.

[Seal Cosmopolitan Mining Company, Organized A. D. 1884.]

AARON H. CRAGIN, *President.*
WILLIAM J. KNOWLTON, *Secretary.*

65 (All of which was duly acknowledged, and certified by the clerk of Cumberland county.)

EXHIBIT 7.

UNITED STATES OF AMERICA, }
State of Colorado, } *ss:*

STATE OF COLORADO,
OFFICE OF THE SECRETARY OF STATE.

I, David A. Mills, secretary of state of the State of Colorado, do hereby certify that I have caused the indices of this office to be carefully examined, and find that a certificate was filed in this office February 10th, 1886, by "Cosmopolitan Mining Company" of Portland, Maine, designating J. M. Jardine as agent for the said company for the State of Colorado, upon whom process might be served, and that this is the last designation of any agent of said company filed as the same appears from the indices of this office.

In testimony whereof, I have hereunto set my hand and affixed the great seal of the State of Colorado, at the city of Denver this seventeenth day of June, A. D. 1902.

(Signed) DAVID A. MILLS,
Secretary of State,
By —— ——, *Deputy.*

[Seal State of Colorado, 1876.]

Thereupon, plaintiff by his counsel objected to exhibits numbered 5, 6, and 7, on the grounds.

1. That the only purpose for which such evidence was offered was to show the appointment of a supposed agent of the plaintiff in the case at bar authorized to receive personal service of summons,
66 and thus warrant the State court in rendering a judgment *in personam* against said plaintiff.

2. That such a judgment could not be so rendered against such plaintiff unless there appeared in the record of the judgment the averment that such plaintiff was doing business in the State of Colorado when its supposed agent was thus served, and the further averment that the supposed agent thus served had authority to bind such plaintiff by the receipt of such service, and that both of these averments are essential jurisdictional requirements which cannot be proved by extrinsic evidence.

To the statements in the certificates that the authority of J. M. Jardine did not appear to have been revoked plaintiff by his coun-

sel further objected that said statements are wholly incompetent' irrelevant and immaterial.

Which objections were overruled by the court provisionally, and with leave to the plaintiff to renew the same after the defendant had introduced all of his evidence.

To which action of the court in overruling said objections provisionally plaintiff by his counsel then and there duly excepted.

Thereupon the defendant further to maintain the issues upon his part offered the following documents in evidence, viz:

67 EXHIBIT 8.

JOHN ASHENFELTER, Plaintiff,
vs.
THE COSMOPOLITAN MINING CO., a Corporation, Defendant. } 1439. Default.

Now, on this day, being the 27" day of June, 1895, plaintiff, by his counsel, Emerson and Bradshaw, appeared and filed his application for default herein against the above-named defendant; and it appearing to the court that summons has been served upon one J. M. Jardine, the heretofore duly authorized and acting agent for said company; and that the said defendant has made no appearance herein; and it further appearing that the complaint of plaintiff is duly verified, and that the time for the appearance of said defendant has expired; it is therefore ordered that default do and the same hereby does enter against said defendant.

JOHN ASHENFELTER, Plaintiff,
vs.
THE COSMOPOLITAN MINING CO., a Corporation, Defendant. } 1439. Judgment.

Now on this day appeared Emerson and Bradshaw, attorneys for plaintiff; the said defendant appearing not, and moved the court that the said cause come on for hearing upon its merits; whereupon the evidence on behalf of plaintiff was introduced before the court without the intervention of a jury. And it appearing to the court that the said defendant is justly indebted to the said plaintiff in the sum of 49 and 82/100 dollars, including interest to date. And it further appearing that default has been duly entered herein in favor of the plaintiff and against the said defendant; it is therefore ordered by the court after being fully advised in the premises and after having heard the testimony of the said plaintiff introduced herein in open court, that the said plaintiff, John Ashenfelter, do
68 have and recover of and from the said defendant The Cosmopolitan Mining Company, the just and full sum of forty-nine and 82/100 dollars, together with his costs herein expended taxed at 22 70/100 dollars. And it is further ordered that the attachment herein be sustained. For which judgment let special execution issue.

ROBT H. WILSON, *Judge.*

No.	Judgment debtors.	Judgment creditors.	Judgment.	Time of entry.	Where entered in judgment book.		Fee book.	Page.	Execution docket.	Satisfaction of judgment when entered.	Nature of relief granted.
					No.	Page.					
1439	The Cosmopolitan Mining Company.	John Ashenfelter.	49.82 (Costs) 22.70	June 27, 1895.	D	171	C	294	1-70	.....	Money judgment.

John Ashenfelter, plaintiff, *vs.* The Cosmopolitan Mining Company, defendant. State of Colorado, county of Ouray, *ss:* In the county court within and for the county of Ouray aforesaid, the —— term, A. D. 18—.

70 (All of which was duly certified by the clerk of Ouray county.)|

EXHIBIT 9.

THE A. W. BEGOLE MERCANTILE CO., a Corporation, Plaintiff,
vs.
THE COSMOPOLITAN MINING CO., a Corporation, Defendant. } Default.

On this 27th day of June, 1895, plaintiff by its counsel, Emerson and Bradshaw, appeared and filed their application for default herein against the above-named defendants and it appearing to the court that summons has been served upon one J. M. Jardine, the heretofore duly authorized and acting agent for said company, and that the said defendant has made no appearance herein; and it further appearing that the complaint of plaintiff is duly verified, and that the time for the appearance of said defendant has expired. It is therefore ordered that default do and the same hereby does enter against said defendant.

THE A. W. BEGOLE MERCANTILE CO., a Corporation, Plaintiff,
vs.
THE COSMOPOLITAN MINING CO., a Corporation, Defendant. } 1437. Judgment.

Now on this day appeared Emerson and Bradshaw, attorneys for plaintiff; the said defendant appearing not, and moved the court that the said cause come on for hearing upon its merits, whereupon the evidence on behalf of plaintiff was introduced before the court without the intervention of a jury. And it appearing to the court that the said defendant is justly indebted to the said plaintiff in the sum of 226 9/100 dollars, including interest to date. And it further appearing that default has been duly entered herein in favor
71 of the plaintiff and against the said defendant,

It is therefore ordered by the court after being fully advised in the premises and after having heard the testimony of the said plaintiff introduced herein in open court, that the said plaintiff The A. W. Begole Mercantile Company do have and recover of and from the said defendant The Cosmopolitan Mining Company the just and full sum of two hundred and twenty-six and 9/100 dollars together with its costs herein expended taxed at 24 58/100 dollars.

And it is further ordered that the attachment herein be sustained. For which judgment let special execution issue.

(Signed) ROB'T H. WILSON, *Judge.*

No.	Judgment debtors.	Judgment creditors.	Judgment.	Time of entry.	Where entered in judgment book.		Fee book.	Page.	Execution docket.	Satisfaction of judgment when entered.	Nature of relief granted.
					No.	Page.					
1437	The Cosmopolitan Mining Company, a corporation.	The A. W. Begole Mercantile Company, a corporation.	226.09 (Costs) 24.58	June 27, 1895.	D	170	C	292	1-70	.....	Money judgment.

The A. W. Begole Mercantile Company, a corporation, plaintiff, *vs.* The Cosmopolitan Mining Company, a corporation, defendant. State of Colorado, county of Ouray, *ss:* In the county court within and for the county of Ouray aforesaid, the —— term, A. D. 18—.

73 (All of which was duly certified by the clerk of the county court of Ouray county.)

EXHIBIT 10.

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court within and for said County and State.

THE A. W. BEGOLE MERCANTILE COMPANY, a Corporation, Plaintiff,
vs.
COSMOPOLITAN M'N'G CO., Defendant.

To Rob't H. Wilson, judge and clerk of said court:

You will please issue special execution in the above-entitled cause, and this shall be your warrant therefor.

(Signed) EMERSON & BRADSHAW,
Att'ys for Pl'ff.

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court within and for the County of Ouray, State of Colorado.

THE A. W. BEGOLE COMPANY, a Corporation, Plaintiff,
vs.
THE COSMOPOLITAN MINING COMPANY, a Corporation, Defendant.
} Writ of Attachment.

74 The People of the State of Colorado to the sheriff of the said county of Ouray, Greeting:

Whereas, the above-entitled action was commenced in the county court in and for the said county of Ouray in the State of Colorado, by the plaintiff in the said action to recover from the defendant The Cosmopolitan Mining Company in the said action the sum of two hundred and thirteen and 02/100 dollars, lawful money of the United States, besides interest at the rate of 8 per cent. per annum from the — day of —— A. D. 189–, and costs of suit; and the necessary affidavit and undertaking herein having been filed as required by law.

Now, we do therefore command you, the said sheriff, that you serve a copy hereof on the above defendant, if he be found in your county, and also attach and safely keep all the property of said defendant The Cosmopolitan Mining Company within your said county, not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiff's demand as above mentioned, unless the said defendant deposit with you an amount, or give you security, by an undertaking of at least two sufficient sureties, in an amount

sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached; in which case you will take such undertaking, and hereof make due and legal service and return.

Witness Rob't H. Wilson, judge and clerk of said court, and the seal thereof at Ouray, this 26th day of April, A. D. 1895.

[SEAL.]

ROB'T H. WILSON,
Judge and Clerk,
By MARY F. WILSON,
Deputy Clerk.

STATE OF COLORADO, } ss:
Ouray County, }

I do certify that I have duly executed the within writ on
75 this 26th day of April, A. D., 1895, by levying upon and attaching all the right, title, interest, claim, and demand and equity of redemption of the Cosmopolitan Mining Company in and to the following real property, to wit: The Yellow Rose lode; the Crusader lode; the Norma lode; the Talisman lode; the Hidden Treasure lode; the Gertrude lode; and the Emily Lode mining claim, situate in Imogene basin, Mt. Sneffles mining district, county of Ouray and State of Colorado, and also the mill sites and each and every of them in said basin, district, county, and State, to said lodes and each and every of them belonging, which said lodes and mill sites are more accurately described in detail and identified by metes and bounds in the books of record in and for the recorder's office of the said county of Ouray and State of Colorado, and to which reference is hereby made. And I hereby certify that I have further executed the within writ by filing a true copy of this levy in the office of the county clerk and recorder of Ouray county said State, this the 26th day of April, 1895. Further, that I have been unable to make service of the within writ on the within-named defendant, there being no person within my said county upon whom process might be served.

MAURICE CORBETT, *Sheriff.*

(The foregoing document was duly endorsed.)

EXHIBIT 11.

P. H. FENNEL, Plaintiff,
vs.
THE COSMOPOLITAN MINING CO., a Corporation, Defendant. } 1440. Default.

Now on this 10th day of July, 1895, plaintiff, by his counsel, Emerson and Bradshaw, appeared and filed his application for default herein against the above-named defendant, and it appearing to the court that summons has been served upon one J. M. Jardine, the heretofore duly authorized and acting agent for said com-
76 pany, and that the said defendant has made no appearance herein; and it further appearing that the complaint of plain-

tiff is duly verified and that the time for the appearance of said defendant has expired; it is therefore ordered that default do and the same hereby does enter against said defendant.

P. H. FENNELL, Plaintiff,
vs.
THE COSMOPOLITAN MINING CO., a Corporation, Defendant. } 1440. Judgment.

Now on this day appeared Emerson and Bradshaw, attorneys for plaintiff, the said defendant appearing not, and moved the court that the said cause come on for hearing upon its merits; whereupon the evidence on behalf of plaintiff was introduced before the court without the intervention of a jury. And it appearing to the court that the said defendant is justly indebted to the said plaintiff in the sum of 126 and 12/100 dollars including interest to date. And it further appearing that default has been duly entered herein in favor or the plaintiff and against the said defendant.

It is therefore ordered by the court after being fully advised in the premises and after having heard the testimony of the said plaintiff introduced herein in open court that the said plaintiff, P. H. Fennel, do have and recover of and from the said defendant The Cosmopolitan Mining Company the just and full sum of one hundred twenty-six and 12/100 dollars, together with his costs therein expended, taxed at 22 82/100 dollars. And it is further ordered that the attachment herein be sustained. For which let special execution issue.

ROB'T H. WILSON, *Judge.*

	Judgment debtors.	Judgment creditors.	Judgment.	Time of entry.	Where entered in judgment book.		Fee book.	Page.	Execution docket.	Satisfaction of judgment when entered.	Nature of relief granted.
					No	Page.					
1440	The Cosmopolitan Mining Company	P. H. Fennell	126.12 (Costs) 22.82	July 10, 1895	D	172	C	295	1-71	.....	Money judgment.

P. H. Fennell, plaintiff, *vs.* The Cosmopolitan Mining Company, defendant. State of Colorado, county of Ouray, *ss:* In the county court within and for the county of Ouray aforesaid, the —— term, A. D. 18—.

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6—447

78 (All of which was duly certified by the clerk of the county court of Ouray county.)

EXHIBIT 12.

W. C. FULTON
vs.
THE COSMOPOLITAN MINING CO. } 1443. Default.

Now on this 26th day of July, 1895, plaintiff by his counsel, Story and Stevens, appeared and filed his application for default herein against the above-named defendant; and it appearing to the court that summons has been served upon one J. M. Jardine, the heretofore authorized and acting agent for said company; and that the said defendant has made no appearance herein; and it further appearing that the complaint of plaintiff herein is duly verified, and that the time for appearance of said defendant has expired; it is therefore ordered that default do and the same does hereby enter against said defendant.

W. C. FULTON
vs.
THE COSMOPOLITAN MINING CO. } 1443. Judgment.

Now on this day appeared Story and Stevens, attorneys for plaintiff; the said defendant appearing not, and moved the court that the said cause come on for hearing upon its merits; whereupon the evidence on behalf of plaintiff was introduced before the court without the intervention of a jury; and it appearing to the court that the said defendant is justly indebted to the said plaintiff in the sum of 1049 and 90/100 dollars including interest to date. And it further appearing that default has been duly entered herein in favor of plaintiff and against said defendant.

79 It is therefore ordered by the court, after being fully advised in the premises, and after having heard the testimony of the said plaintiff introduced herein in open court that the said plaintiff W. C. Fulton, do have and recover of and from the said defendant, The Cosmopolitan Mining Company, the just and full sum of ten hundred forty-nine and 90/100 dollars, together with his costs herein taxed at — dollars. And it is further ordered that the attachment herein be sustained. For which let special execution issue.

No.	Judgment debtors.	Judgment creditors.	Judgment.	Time of entry.	Where entered in judgment book.		Fee book.	Page.	Execution docket.	Satisfaction of judgment when entered.	Nature of relief granted.
					No.	Page.					
1443	The Cosmopolitan Mining Co.....	Wm. C. Fulton...	1049.90 (Costs) 18.60	July 23, 1895.	D	173	C	298	1-71	.....	Money judgment.

William C. Fulton, plaintiff, *vs.* Cosmopolitan Mining Company, defendant. State of Colorado, county of Ouray, *ss:* In the county court within and for the county of Ouray aforesaid, the —— term, A. D. 18—.

81 (All of which was duly certified by the clerk of the county court of Ouray county.)

EXHIBIT 13.

STATE OF COLORADO, } ss:
County of Ouray, }

In the District Court of the Seventh Judicial District of the State of Colorado, Sitting within and for the County of Ouray Aforesaid.

THOMAS F. WALSH, Plaintiff,
vs.
THE COSMOPOLITAN MINING COMPANY and J. M. JARDINE, Defendants.

Be it remembered, that on the first day of March, A. D. 1897, there was filed in the office of the clerk of said district court in said cause a certain complaint in words and figures following, to wit:

STATE OF COLORADO, } ss:
County of Ouray, }

In the District Court Thereof.

THOMAS F. WALSH, Plaintiff,
vs.
THE COSMOPOLITAN MINING COMPANY and J. M. JARDINE, Defendants.

Plaintiff complains and alleges:

First. That the defendant is a corporation organized under the laws of the State of Maine, for the purpose, among others, of carrying on a mining business in the county of Ouray and State of
82 Colorado, and by certificate dated December 16th, 1885, recorded in Book C–1, page 291, on January 21st, 1886, the said J. M. Jardine afterwards was, as required by the laws of the State of Colorado, duly appointed as the authorized agent of the defendant company, upon whom process might be served.

Second. That during the months of April and May, A. D. 1895, the A. W. Begole Mercantile Company, John Ashenfelter, P. H. Fennell *et al.*, commenced their certain actions in the county court of Ouray county aforesaid against the defendant company above named, and in said actions summons were duly issued and the necessary affidavits and undertakings having been duly given, writs of attachment were duly issued in each of said actions and levied upon the property hereinafter described, and in said actions and each of them the said summons and writs of attachment were duly served upon the defendant company *by delivering the same to the* said J. M. Jardine *as the agent of the defendant company.*

Third. That in said actions, and each of them, judgments were duly had and entered in said court against the defendant company, and on the 23rd day of July, 1895, special execution was duly issued

out of said county court in that certain action in which The A. W. Begole Mercantile Company was plaintiff, and The Cosmopolitan Mining Company was defendant, and said property hereinafter described was duly levied upon, advertised and sold by the then sheriff of Ouray county to one J. C. Marsh as trustee, and a certificate of purchase duly issued to him.

Fourth. That afterwards, the said Marsh, for a valuable consideration, duly assigned said certificate of purchase to one Stephen A. Osborn, and on May 25th 1896, the time of redemption having expired, the then sheriff of Ouray county duly executed and delivered to Stephen A. Osborn a sheriff's deed for the premises hereinafter described.

Fifth. That on June 16th, 1896, the plaintiff herein purchased from the said Stephen A. Osborn for the sum of ten thousand
83 ($10,000) dollars, all of the premises in said sheriff's deed mentioned, to wit: The Yellow Rose Lode mining claim; the Crusader Lode mining claim; the Talisman Lode mining claim; the Hidden Treasurer Lode mining claim; the Gertrude Lode mining claim, and the Emily Lode mining claim, together with the several mill sites patented in connection with said lode mining claims, and each of them, all situate in Imogene basin, in Mt. Sneffles' mining district, in the county of Ouray and State of Colorado, being the premises particularly described in that certain deed of conveyance executed by one Thomas F. Wentworth to the Cosmopolitan Mining Company on July 8th, 1890, which deed is of record in the office of the clerk and recorder of Ouray county aforesaid in Book 57 at page 240, as will appear by said deed conveying said premises from the said Stephen A. Osborn to the plaintiff herein, recorded in Book 62, at page 326, on the 30th day of November, 1896, in the office of the clerk and recorder, of Ouray county aforesaid, being the premises levied upon in the said several writs of attachment issued against the Cosmopolitan Mining Company aforesaid, and duly sold by the sheriff on August the 24th, 1895, as above set forth.

Sixth. That the plaintiff is now in the actual peaceable possession of the above-described premises, and is the owner in fee thereof, and is engaged in working and developing the mining claims aforesaid, and is expending thereon divers large sums of money for the purpose of proving and establishing their value as mining claims aforesaid.

Seventh. That notwithstanding the proceedings in all and each of said actions in said county court were in all respects lawful and valid and within the jurisdiction of said court, and notwithstanding no appeal was taken, or bill of exceptions filed, and the time for so doing has long since elapsed, the defendants and each of them pretend and claim that they still hold some interest in said real property above described, adverse to the said claim of the plaintiff and thereby prevent the plaintiff from obtaining the necessary assistance and capital required for the purpose of developing the same.

84 Wherefore plaintiff prays judgment:

First. That said defendants and each of them may be re-

quired to come into court and specify the nature of their claims and have them finally adjudicated.

Second. That on the final hearing it may be determined that said defendants have not, nor have either of them, any interest, right, title, claim, or demand to the premises above described, or any part thereof.

Third. For general relief.

(Signed) STORY & STEVENS,
Attorneys for Plaintiff.

(Above is duly verified and endorsed.)

Be it further remembered, that on the 5th day of March, A. D. 1897, there was filed in the office of the clerk of said district court, in said cause, a certain answer, in words and figures following, to wit:

STATE OF COLORADO, } *ss:*
County of Ouray, }

In the District Court.

THOMAS F. WALSH, Plaintiff,
vs.
THE COSMOPOLITAN MINING COMPANY and J. M. JARDINE, Defendants.

Now comes the defendant J. M. Jardine, and for answer to the complaint filed herein, says:

First. That the only interest he has had in this matter grows out of the fact that the summons in each of the original actions in the complaint mentioned was served upon him as agent of the defendant company, and that upon said writ being so served upon him, he duly mailed the same to the president of the defendant company, with postage fully paid, in envelopes with return card printed thereon. That said letters were not returned to this defendant, nor was he instructed in any manner by the defendant company, or its officers to defend said actions, nor did he have any knowledge of facts on which said actions could be defended, and *therefor-* allowed judgments in said action to be taken without interposing any defense on the merits. That since the entry of said judgment and the sale of the premises in the complaint thereunder, he has not claimed, nor pretended to claim any interest in said premises adverse to the plaintiff.

Wherefore he prays to be dismissed with his costs.

(Signed) J. M. JARDINE, *Pro Se.*

(Above document is duly verified and endorsed.)

Be it further remembered, that on the 25th day of March, A. D. 1897 there was filed in the office of the clerk of said district court, in said cause, a certain summons, which, with the return endorsed thereon, is in words and figures following, to wit:

STATE OF COLORADO, } ss.:
County of Ouray, }

In the District Court.

THOS. F. WALSH, Plaintiff,
vs.
THE COSMOPOLITAN MINING CO. and J. M. JARDINE, Defendant-. } Summons.

The People of the State of Colorado to The Cosmopolitan Mining Company and J. M. Jardine, the defendant- above named, Greeting:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the district court of Ouray county, State of Colorado, and answer the complaint therein within twenty days after the service hereof, if served within this
8½ county; or, if served out of this county, or by publication, within thirty days after the service hereof, exclusive of the day of service; or judgment by default will be taken against you according to the prayer of the complaint. And if a copy of the complaint in the above-entitled action be not served with this summons, or if the service hereof be made out of this State, then ten days additional to the time bereinbefore specified for appearance and answer will be allowed before the taking of judgment by default as aforesaid.

The said action is brought to obtain a decree quieting the title of plaintiff to the "Yellow Rose" "Crusader," "Talisman," Hidden Treasure, Gertrude and Emily Lode mining claims together with the several mill sites patented in connection with said lode mining claims, all of said mining claims being in Imogene basin in Mt. Sneffles mining district in the county of Ouray and State of Colorado as will more fully appear from the complaint in said action to which reference is here made; and *a copy of which is hereto attached. And you are hereby notified that if you fail to appear and to answer the said complaint as above required, the said plaintiff will enter a default against you and apply to the court for the relief demanded in the complaint.

Given under my hand and the seal of said court, at Ouray, in said county, this first day of March, A. D. 1897.

(Signed) JAS. W. ABBOTT, *Clerk*,
[SEAL.] By JOHN MAQUILKEN, *Deputy*.

(Index.) *A copy of which is hereto attached.

(On the back of the foregoing was the following:)

STATE OF COLORADO, } ss.:
County of Ouray, }

I do hereby certify that I have duly served the within summons* together with a copy of the complaint in the within-stated action,

on this 4th day of March A. D. 1897, by personally deliver-
87 ing a true copy of said summons,* together with a copy of the original complaint in the action therein mentioned, thereto attached, to the within-named defendants The Cosmopolitan Mining Company and the said J. M. Jardine at Ouray in said county. I further certify that the service of the summons and complaint upon the Cosmopolitan Mining Co. was made by delivering to John M. Jardine, the duly authorized agent of the defendant company and designated by it as the person upon whom service should be made, a copy of said summons with a copy of the complaint attached specially for said defendant company.

(Signed) W. J. BENTON, *Sheriff*,
By JOHN MAQUILKEN,
Undersheriff.

(Index.) * Erase if copy of complaint is not served.

(The foregoing document was duly endorsed.)

Be it further remembered, that on the 25th day of March, A. D. 1897, there was filed in the office of the clerk of said court in said cause, a certain præcipe which is in words and figures following, to wit:

STATE OF COLORADO, } *ss.*:
County of Ouray, }

In the District Court within and for said County and State.

THOMAS *T.* WALSH, Plaintiff,
vs.
THE COSMOPOLITAN MINING COMPANY and J. M. JARDINE, Defendants.

To —— ——, clerk of said court:

You will please enter the default of the defendants The Cosmopolitan Mining Company, in the above-entitled cause, and this shall be your warrant therefor.

88 Dated March 25th, 1897.

(Signed) STORY & STEVENS,
Attorneys for Plaintiff.

(The above document was duly endorsed.)

Be it further remembered, that on the 25th day of March, A. D. 1897, there was entered in the default record in the office of the clerk of said district court, in said cause, a certain order in words and figures following, to wit:

THOMAS F. WALSH, Plaintiff,
vs.
THE COSMOPOLITAN MINING COMPANY and J. M. Jardine, Defendants. } 957. In Vacation.

In this action the defendant, The Cosmopolitan Mining Company, having been regularly served with process and having failed to appear and answer the plaintiff's complaint in this behalf, the legal time for answering having expired and no answer, motion, or demurrer having been filed, upon application to the clerk by Story & Stevens, Esquires, attorneys for said plaintiff, the default of said defendant, The Cosmopolitan Mining Company, in the premises is hereby duly entered according to law.

Done in vacation, this 25th day of March, A. D. 1897, by the clerk of said court.

Attest: JAMES W. ABBOTT, *Clerk*,
By F. W. ABBOTT, *Deputy*.

Convenement.

The regular May term of the district court of the seventh judicial district of the State of Colorado, sitting within and for the county of Ouray, convenes at the court-house in the city of Ouray on the 11th day of May, A. D. 1897, there being present the following officers:

Hon. W. H. Gabbert, judge.
89 W. J. Benton, sheriff.
James W. Abbott, clerk,
By F. W. Abbott, deputy.

Be it remembered, that on the 11th day of May, A. D. 1897, it being one of the regular juridical days of the May term, A. D. 1897, of said district court, to wit, the first day of said term, the following order and decree was entered of record in said court in said cause, to wit:

THOMAS *H.* WALSH
vs.
THE COSMOPOLITAN MINING COMPANY and J. M. JARDINE. } 957.

Now on this day this cause comes on to be heard by the court upon the verified complaint of the plaintiff, the answer of the defendant J. M. Jardine and the default of the defendant, The Cosmopolitan Mining Co. duly entered herein for the failure of the said defendant to plead as required by law, after due service of summons upon it in manner and form as by law provided.

And thereupon the said plaintiff was duly sworn as a witness in said cause. And the court having heard the testimony given by him and inspected the records, deeds, and documents offered in evidence, doth find:

First. That the defendant is a corporation organized under the laws of the State of Maine for the purpose, among others, of carrying on a mining business in the county of Ouray and State of Colorado,

and by certificate dated December 16th, 1885, recorded in Book C-1 page 291, on January 21st, 1896, the said J. M. Jardine afterwards was as required by the laws of the State of Colorado, duly appointed as the authorized agent of the defendant company, upon whom process might be served.

Second. That during the months of April and May, A. D.
90 1895, The A. W. Begole Mercantile Company, John Ashenfelter, P. H. Fennell, *et al.*, commenced their certain actions in the county court of Ouray county aforesaid, against the defendant company above named, and in said actions summons were duly issued and the necessary affidavits and undertakings having been duly given, writs of attachment were duly issued in each of said actions and levied upon the property hereinafter described, and in said actions and each of them the said summons and writs of attachment were duly served upon the defendant company by delivering the same to the said J. M. Jardine as the agent of the defendant company.

Third. That in said actions, and each of them, judgments were duly had and entered in said court against the defendant company and on the 23rd day of July, 1895, special execution was duly issued out of said county court in that certain action in which The A. W. Begole Mercantile Company was plaintiff, and The Cosmopolitan Mining Company was defendant, and said property hereinafter described was duly levied upon, advertised, and sold by the then sheriff of Ouray county to one J. C. Marsh, as trustee, and a certificate of purchase duly issued to him.

Fourth. That afterwards, the said Marsh, for a valuable consideration, duly assigned said certificate of purchase to one Stephen A. Osborn, and on May 25th, 1896, the time of redemption having expired, the then sheriff of Ouray county duly executed and delivered to Stephen A. Osborn a sheriff's deed for the premises hereinafter described.

Fifth. That on June 16th, 1896, the plaintiff herein purchased from the said Stephen A. Osborn for the sum of ten thousand ($10,000) dollars all of the premises in said sheriff's deed mentioned, to wit: the Yellow Rose Lode mining claim; the *Cruisader* Lode mining claim; the Talisman Lode mining claim; the Hidden Treasure Lode mining claim; the Gertrude Lode mining claim; and the Emily Lode mining claim, together with the several mill sites patented in connection with said lode mining claims, and each of them, all situate in Imogene basin in Mt. Sneffles mining
91 district, in the county of Ouray and State of Colorado, being the premises particularly described in that certain deed of conveyance executed by one Thomas F. Wentworth to the Cosmopolitan Mining Company on July 8th, 1890, which deed is of record in the office of the clerk and recorder of Ouray county aforesaid, in Book 57, at page 240, as will appear by said deed conveying said premises from the said Stephen A. Osborn to the plaintiff herein, recorded in Book 62, at page 326, on the 30th day of November, 1896, in the office of the clerk and recorder of Ouray county afore-

said, and being the premises levied upon in the said several writs of attachment issued against the Cosmopolitan Mining Company aforesaid, and duly sold by the sheriff on August the 24th, 1895, as above set forth.

Sixth. That the plaintiff is now in the actual peaceable possession of the above-described premises, and is the owner in fee thereof, and is engaged in working and developing the mining claims aforesaid, and is expending thereon divers large sums of money for the purpose of proving and establishing their value as mining claims aforesaid.

Seventh. That notwithstanding the proceedings in all and each of said actions in said county court were in all respects lawful and valid and within the jurisdiction of said court, and notwithstanding no appeal was taken, or bill of exceptions filed and the time for so doing has long since elapsed, the defendant, The Cosmopolitan Mining Co. pretends and claims that it still holds some interest in said real property above described, adverse to the claim of the plaintiff and thereby prevents the plaintiff from obtaining the necessary assistance and capital required for the purpose of developing the same.

It is therefore considered, adjudged, and decreed by the court that the said defendants have not, nor have either of them any right, title, interest, claim or demand in or to any part of the premises above described, and that the pretended claim of the defendant, The Cosmopolitan Mining Company in and to said premises is wholly without right, or justification in law. That the plaintiff is
92 the owner and in the possession of the premises and mining claims above described and entitled to the quiet and peaceable possession of said mining claims and each of them.

It is further considered that the plaintiff pay the costs of this proceeding. And thereupon on application of the plaintiff, permission is given to him to withdraw the documentary evidence offer by him on the trial of this cause.

STORY & STEVENS.

THOMAS F. WALSH
vs.
THE COSMOPOLITAN MINING CO. & J. M. JARDINE. } 957.

To clear title to the Yellow Rose, the Crusader, the Talisman, the Hidden Treasure, the Gertrude, & the Emily lodes, Imogene basin, Ouray Co., Colorado.

Mar. 1, 1897.	Cause ent. & ind. reg. actions.....	20	
	Complaint filed, ent. reg. actions.....	22½	
	Summons issued ent. r. a.....	70	
	Ent. app. pl'ff's att.....	25	
Mar. 4, 1897.	Sum. ret'd f. e. r. a.....	22½	
Mar. 4, 1897.	Cr. by cash from defendant'- att.....	.....	5.00
Mar. 5, 1897.	Disclaimer of interest f. e. r. a.....	.....	22½
" 25, "	Default præc'pe f. e. r. a.....	22½	
	Default ent. def. rec. 1 p. 146.....	70	

May —, 1897.	May term docket	40	
" 11, "	Order ent. & ind. rec. 4—p. 230	2.50	
	Swearing plaintiff	12½	
	Judgment ent. J. B. p. 318	2.50	
	Judgment docket	60	
	General index	1.30	
	Making & ent. fee bill	75	
	Copy decree—certified	2.80	
May 20, 1897.	Cr. by check Story & Stevens	.....	8.50

Memoranda.

March 1, 1897.—Complaint filed.
Sum. issued, Mar. 4, 1897.
Sum. returned, with service on Cosmopolitan M. Co. through J. M. Jardine agent, Mar. —, 1897.
Disclaimer of interest filed by def't J. M. Jardine May 11, 1897.
Judgment ent. in favor of pl'ff granting title to mining premises. Pl'ff to pay costs.

(Written in ink on the bottom of the foregoing was the following:)
Register of actions & Fee Book "C" page 85.

93 *Transcript of Judgment Docket, Ouray County District Court.*

No.	Judgment debtors.	Judgment creditors.	Time of entry.	Judgment book.		Fee book.	
				No.	Page.	Book.	Page.
957	Cosmopolitan Mining Co.	Thos. F. Walsh ..	May 11, 1897	A	318	C	85

(There were also the subheadings "Judgment," "Execution docket," "Motion for new trials and appeals, when taken," "Judgment of appellate court," "Satisfaction of judgment, when entered," and "Remarks," but these did not have anything under them.)

Thomas F. Walsh, plaintiff, *vs.* The Cosmopolitan Mining Co., defendant. State of Colorado, county of Ouray, *ss:* In the district court within and for the county of *of* Ouray aforesaid, the —— term, A. D. 18—.

94 (All of which was duly certified by the clerk of the district court in Ouray county.)

Thereupon, plaintiff by its counsel objected to the order of default, judgment, and transcript in the case of The A. W. Begole Mercantile Company *vs.* The Cosmopolitan Mining Company, Exhibit 9, offered in evidence by the defendant, on the grounds following, viz:

Mr. PERRY: It appears from the uncontested evidence in the case at bar that the plaintiff is a foreign corporation. It appears from the record in the case of The A. W. Begole Mercantile Company *vs.* The Cosmopolitan Mining Company that the judgment in that case

was rendered in pursuance of a personal service of summons upon a supposed agent of the plaintiff, and that there was no other service of summons than such attempted personal service. It appears further that such judgment is by default; that the plaintiff never in any way appeared or submitted to the jurisdiction of the court which rendered the judgment; that it nowhere appears in said record and it is not pleaded by the defendant in the case at bar that the plaintiff was doing business in the State of Colorado when its supposed agent was thus served with process, and that the plaintiff was doing business is an essential jurisdictional averment which must appear affirmatively in the record. Furthermore we object on the ground that it nowhere appears in the record that any process was served upon any person having authority to receive
95 service of process from the defendant, and it nowhere appears in that record that the alleged service was made in Ouray county. We object further that, for the reasons mentioned, to give effect to that judgment would be to deprive us of the property in controversy without due process of law and in contravention of the Federal Constitution.

To the introduction of the orders of default, judgments, and the transcripts in the cases of William C. Fulton (Exhibit 12) John Ashenfelter (Exhibit 8) and P. H. Fennell (Exhibit 11) plaintiff by its counsel made identically the same objections.

To the introduction of the record in the case of Thomas F. Walsh vs. The Cosmopolitan Mining Company (Exhibit 13) in the district court plaintiff by its counsel made the same objections and the further objection that the decree in that case had been rendered in pursuance of a supposed personal service of process, and that it does not require the plaintiff in the case at bar to make a conveyance of the property, but attempts to vest the title to the property in controversy of itself and without requiring the plaintiff to make the conveyance.

Plaintiff by its counsel made the further objection to all of these judgments and proceedings that it does not affirmatively appear from the records offered in evidence that the several courts had jurisdiction to render any judgment and that therefore all of said judgments are without due process of law and in violation of
96 the Constitution of the United States.

Plaintiff by its counsel made the further special objection to the levy of the writ of attachment (Exhibit 10) that the mere levy of a writ of attachment was insufficient to give the court jurisdiction to render a judgment.

The court sustained plaintiff's objection as to the judgments and proceedings in the county court of Ouray county (Exhibits 1, 8, 9, 10, 11, and 12) and overruled said objection as to the decree and proceedings in the district court of Ouray county (Exhibit 13), the opinion of the court being in words following:

The COURT: The questions presented by these objections are important, and it is to be regretted that the court has not had time to examine fully all the authorities cited upon them. Yet on the

principal questions argued I confess I have some opinion and had anterior to the argument. The questions are presented, it seems to me, somewhat different on the suit to quiet title and on the four suits in attachment. However, viewing these attachment suits with reference to the attachment and simply on the question of whether the court had jurisdiction of the person of a foreign corporation by the service of summons on its agent the question would seem to be settled adversely to the defendant by the decision of the judge filed in the case of St. Clair against Cox.

In those suits the character of the agent does not appear.
97 The authority of the agent to receive service of process does not appear. If St. Clair *vs.* Cox means anything it means that that authority of the agent to receive service of process must appear somewhere in the record, not necessarily in the judgment, not even necessarily in the complaint, because the court says it may appear a præcipe for a summons or for a writ of attachment, but that somewhere in the record it must appear that the agent served was authorized, and that if it does not so appear the court of a foreign jurisdiction at least should exclude the judgment; that no presumption should be indulged in sufficient to overcome this return of service on an agent, and that the burden is not on the other side to show that the person served was not in fact an agent, but is on the person offering the testimony to show in the first place that the agent was authorized. The court in considering that says that it should appear that the corporation was doing business within the State and from that it is argued that in every case in which a foreign corporation is sued it must appear that it was doing business within the State. Certain general language used in this opinion would seem to indicate that. But when we view the opinion in the light of the facts presented for decision, I do not so conclude the law to be. In that case it simply appeared that the summons was served on an agent of the defendant corporation. There was no showing that that agent had any express authority to receive service of summons. It was con-
98 tended that he had implied authority because a law of the State made it a condition on a which a corporation could do business in that State that it should be served by serving certain agents. It did not make it a condition expressly, but when the law was considered with reference to the permission to do business it implied that they made that condition. In other words, when the corporation came into that foreign State to do business it did it with notice of the law, of the statute—that the statutes of that State provide that all corporations might be served by serving the process on certain officers; that hence it impliedly consented to be bound in that way. But that implication of consent flowed from simply doing business in the State and would continue just so long as the corporation did business in the State; that that implication of a consent increased the authority of its officers and measured it by what the law provided, such an officer should do and made that officer authorized to receive a service of summons. In such a case of course the authority of the officer to be served flows simply from

the corporation doing business in the State, and in such a case I take it the Supreme Court has held that it must appear somewhere in the record that the corporation was doing business in the State, otherwise while the return of process would show that there was a service on an agent it would not show that the agent was
99 acting within the scope of his authority. One shows the corporation was doing business in the State and the law shows the scope of his authority because the law provides that such agent may be served and that he represents the corporation in that particular. In these attachment suits, without regard to the attachment now, it would appear that the judgments were void because it did not appear by record that the officer served was such an officer as was authorized to receive service and that that would have to appear as a matter of record. It is said that the courts of this State have held that with respect to such judgments the same presumptions are indulged—although the court is proceeding under statute exercising a special statutory jurisdiction—as would be indulged in favor of the judgments under their general jurisdiction. That decision was not in the construction of any State statute but was an enunciation of general principles of law as to which this court is not concluded by the finding of the supreme court of Colorado. But of course this court is concluded by the decisions of the Supreme Court of the United States. I apprehend the theory upon which that decision of the Supreme Court of the United States rested as in the case of Pennoyer *v.* Neff, is this: That where a certain service affirmatively appears no other service is presumed. *Prima facie*, a judgment take- against "A" on a service recited to be on "B" would be void. That the same principle applies to corporations, although they can only be served by serving their agents, and that this pre-
100 sumption of itself being void, flowing from the fact that the service is on some one other than the defendant himself, is only rebutted by showing that the person served stands in such relation to the corporation that his service is the service of the defendant corporation. In other words, that he was authorized by the defendant, either expressly or impliedly, to receive service of summons. The serious question in the case as to these attachment suits, it seems to me, is whether the court has jurisdiction *in rem* or whether that court had jurisdiction *in rem*, and whether the suit, notwithstanding the lack of service on the defendant, could proceed *in rem*. On that question I confess I have had very serious doubt and my mind is not yet free from doubt about it. The language used in Cooper *v.* Reynolds is certainly broad enough to hold that these judgments are not void so far as they are to be considered as judgments against property and so far as they subjected the property to the satisfaction of the judgments; that the one essential thing to create jurisdiction would be the seizure of the property. The facts in Cooper *v.* Reynolds do not differ in a very marked degree from the facts shown. The statutes of Tennessee provide for the service of summons by publication and for the attachment of the property by filing in a certain office the notice of that attachment and for the service on the defendant of a notice of the attachment. If the defendant could not

be found it provided for the publication of that notice of attach-
101 ment. Now in Cooper *v.* Reynolds there was no showing whatsoever in the record and no claim made that the summons itself was ever served. The return on the summons was that the defendant could not be found but there was no order of publication at all, no attempt to serve the summons. There was an order of publication as to notice of attachment. No proof of that publication was found in the record, but the court in its decree in its judgment of that case, found as a fact that the publication of this attachment notice had been made in accordance with a formal order of the court. That fact is not given any great prominence in the decision. Judge Miller in the decision throughout treats the case as depending on the seizure of the property but the question remains, What is the seizure of that property? Was it the filing of the notice in the office of the county recorder or any special office, or were both steps necessary to constitute an attachment or seizure of the property? In these cases there is no physical seizure of the real estate. The acts provided by the statute for the attachment are simply an equivalent to that seizure. The Colorado statute, as the Tennessee statute, seems to provide the two acts,—the filing of the notice and the service of the notice. When that is done the seizure of the property, I take it, is complete. This is also my construction of the decision of the supreme court of Colorado, quoted in 12 Colo., that the attachment itself
is not complete, the seizure of the property. The property
102 is not brought within the jurisdiction of the court so far as to authorize the court to proceed to the condemnation of that property until not only the notice is filed, but the notice is served, not the summons in the action but the attachment notice, notice that the property is attached,—and that judgment proceedings in the absence of such completed attachment would be void. It would follow from that that these judgments would have to be treated as void in this court. It must be remembered that nothing but the judgments and the attachments are offered. The court is not authorized to look at the complaint to see whether it did as a matter of fact appear in this proceeding that the corporation was doing business; that might be a question that is open to debate as to whether it did not appear in the complaints, but those complaints are not offered,—but that is the complaint in three of the suits. And I am inclined to sustain the objection to the parts of these attachment suits that are offered in evidence. With the suit to quiet title I reach a different conclusion. The provision, I think, as to the corporation or the necessity for showing by the record that the corporation is doing business in the State, is simply for the purpose of showing the authority of the agent who was in fact served. There was never any difficulty about a foreign corporation voluntarily entering its appearance in any suit in any foreign jurisdiction;
it always had a right to do that. If such foreign corporation
103 was authorized by its charter to execute a promissory note it had a right to execute a judgment note, that is, a note authorizing its appearance to be entered and a judgment taken. I see no

objection to such foreign corporation agreeing in advance that its appearance should not be entered in a certain way *nor* that it should be bound by a certain service, the service resting on the agreement of the corporation. In the suit to quiet title it appears by the decree of the court that this corporation was organized to do business in the State of Colorado, that that was one was of the objects for which it was organized; that it did appoint an agent under the law of Colorado who was authorized by the corporation to receive service of process. So the authority of this agent to receive this service appears affirmatively on the face of this record. The corporation is found where its agents are found. It is true that if the agent is casually in the State and is not there in his capacity of agent he does not represent the corporation. But it appears affirmatively in this record that this agent is here in his capacity as agent. He was authorized by the corporation to receive service of process in the State of Colorado—that is the allegation—and that the corporation was by its charter not only authorized but was formed for the very purpose of carrying on a part of its business in the State of Colorado. I think it sufficiently appears in this suit to quiet title that the court has jurisdiction of the defendant.

104 It is true that the defendant is not concluded by the recitals in this decree, but there is no evidence before the court contradicting him. The plaintiff in this suit rests simply upon the fact and on the presumptions resulting from the fact that it was a foreign corporation. It is said that this judgment decree is void for another reason; that the court could only proceed *in personam*, and it could not decree the legal title out of the defendant and in the plaintiff. That was not what the court attempted to do. The court attempted to quiet the legal title in the plaintiff already vested in the plaintiff against claims of the defendant; that the court charged in substance. The fact of where the legal title was was litigated between these parties; it cannot be relitigated in any other court. It is conclusively determined by the finding here, assuming that the court had jurisdiction, and the court did not assume by its decree to take the legal title out of the defendant, and, by virtue of the decree alone, transfer it to the plaintiff; that was not the character of the suit. The objection will be overruled as to the record in the case to quiet title.

To which action of the court in refusing to admit Exhibits 1, 8, 9, 10, 11, and 12, the defendant by his counsel then and there duly excepted, and to which action of the court in admitting Exhibit 13, the plaintiff by its counsel then and there excepted.

105 The defendant by his counsel thereupon reoffered Exhibits 1, 8, 9, 10, 11, and 12, supplementing the said exhibits by offering a complete record of all of the proceedings of the county court in each of said causes (with the exception of Plaintiff's Exhibit R, hereinafter mentioned).

The supplement in the record in Exhibit 8 (which supplement is

[* Interlined in pencil in copy.]

now marked Exhibit 20, for convenience, although at the time of the trial it was not given a new number) consists of the following documents.

EXHIBIT 20.

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court.

JOHN ASHENFELTER, Plaintiff,
vs.
THE COSMOPOLITAN MINING COMPANY, a Corporation, Defendant. } Complaint.

Plaintiff complains and alleges:

I. That the amount involved in this action and for which relief is sought does not exceed the sum of two thousand dollars.

II. That the defendant is a corporation duly incorporated and organized under and by virtue of the laws of the State of Maine, with its principal office in the State of Colorado, at the city of Ouray in said Ouray county. And by way of complaint against the defendant the plaintiff alleges:

I. That on or about the 31st day of December, A. D. 1894, the defendant was indebted to the plaintiff in the sum of $47.90 for and upon an account for work and labor done and performed
106 and services rendered by the plaintiff for said defendant at defendant's special instance and request between the 1st day of June, 1894, and the date last aforesaid, which should have been paid for at the completion of such work.

II. That the said sum of $47.90 has not been paid nor any part thereof, and the same is now due and owing from defendant to this plaintiff, together with interest thereon at the rate of 8 % per annum from the 31st day of December, 1894.

III. That on or about the 26th day of April, 1895, suit was commenced against the defendant herein by the A. W. Begole Mercantile Company in this court, wherein a writ of attachment was issued out of this court and a levy made thereunder by the sheriff of said Ouray county attaching all of the real property of the said defendant found in said county.

Therefore plaintiff asks:

1. For judgment against the defendant herein for the said sum of $47.90, together with interest thereon from the 31st day of December, 1894, at 8 % per annum.

2. That he may be made a party plaintiff in the said suit hereinabove mentioned and be given like remedies against the defendant herein as the law gives to the original plaintiff in the said action.

3. For costs of this action, and for general relief.

(Signed) EMERSON & BRADSHAW,
Attorneys for the Plaintiff.

(Above document is duly verified, and endorsed.)

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court within and for the County of Ouray Aforesaid — the —— Term, A. D. 18—.

107 JOHN ASHENFELTER, Plaintiff,
versus
THE COSMOPOLITAN MINING CO., a Corporation, Defendant.

John Ashenfelter of said county, being duly sworn, doth depose and say that the Cosmopolitan Mining Co. against whom the said —— —— is about to sue out an attachment is indebted to him in a sum not exceeding twenty hundred dollars, to wit, the sum of forty-seven and 90/100 dollars; and that the said demand is now due and owing and that sum is due from defendant to plaintiff for and upon an account for work and labor done and performed and services rendered by plaintiff for defendant at defendant's special instance and request, between June 1st, 1894, and December 1st, 1894, which should have been paid for at the completion of such work; with interest from Dec. 31st, 1894, at 8 % per annum.

(Signed) JOHN ASHENFELTER.

Sworn and subscribed to before me this 21st day of May, A. D. 1895.

ROB'T H. WILSON,
Judge and Clerk,
[SEAL.] By MARY F. WILSON,
Dep. Clerk.

(Above document was duly endorsed.)

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court of the State of Colorado Sitting within and for the County of Ouray.

108 JOHN ASHENFELTER, Plaintiff,
vs.
COSMOPOLITAN MINING COMPANY, a Corporation, Defendant. } Undertaking on Attachment.

Whereas, the above-named plaintiff has commenced, or is about to commence an action in the county court within and for the county of Ouray against the above-named defendant, upon a contract for the direct payment of money, claiming that there is due to the said plaintiff from the said defendant the sum of forty-seven and 90/100 dollars lawful money of the United States, besides interest, and said plaintiff is about to apply for an attachment against the property of the said defendant as security for the satisfaction of any judgment that may be recovered therein

Now, therefore, we, the undersigned residents of the county of Ouray State of Colorado, in consideration of the premises, and of the

issuing of said attachment, do jointly and severally undertake in the sum of one hundred ten dollars lawful money and promise to the effect that if the said defendant recover judgment in said action, or if the said court shall finally decide that the said plaintiff was not entitled to an attachment, the said plaintiff will pay all costs that may be awarded to the said defendant and all damages which it may sustain by reason of the wrongful suing out of the said attachment, not exceeding the sum of one hundred ten dollars. Dated this 21st day of May, A. D. 1895.

(Signed) JOHN ASHENFELTER.
(Signed) GOE M. SEEGER.

(On the back of the foregoing document was a form of jurat but it was not filled out. The document was duly endorsed.)

109 STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court.

JOHN ASHENFELTER, Plaintiff,
vs.
COSMOPOLITAN MINING CO., a Corporation, Defendant. } Summons.

The People of the State of Colorado to Cosmopolitan Mining Co., the defendant above named, Greeting:

You are hereby required to appear in an action brought against you by the above-named plaintiff, in the county court, of Ouray county, State of Colorado, and answer the complaint therein within twenty *twenty* days after the service hereof if served within this county; or if served out of this county, or by publication, within thirty days after the service hereof, exclusive of the day of service; or judgment by default will be taken against you according to the prayer of the complaint.

And if a copy of the complaint in the above-entitled action be not served with this summons, or if the service hereof be made out of this State, then ten days additional to the time hereinbefore specified for appearance and answer will be allowed before the taking of judgment by default as aforesaid.

The said action is brought to recover from the defendant the sum of $47.90, with interest from December 31st, 1894, at 8 % per annum, amount alleged to be due from the defendant to plaintiff on account of work and labor done and performed and services rendered by plaintiff for defendant, at its special instance and request, between the 1st day of June, 1894, and the 31st day of December, 1894, as will more fully appear from the complaint in said action to which reference is here made:*

110 And you are hereby notified that if you fail to appear, and to answer the said complaint as above required, the said plaintiff will take judgment by default against you in accordance with the prayer of said complaint.

Given under my hand and the seal of said court at Ouray in said county, this 21st day of May, A. D. 1895.

ROB'T H. WILSON,
Judge and Clerk,
By MARY F. WILSON,
Dep. Clerk.

[SEAL.]

(Index) *A copy of which is hereto attached.

STATE OF COLORADO, } ss:
County of San Miguel, }

I do hereby certify that I have duly served the within summons together with a copy of the complaint in the within-stated action, on this 23rd day of May, A. D. 1895, by personally delivering a true copy of said summons, together with a copy of the original complaint in the action therein mentioned, thereto attached to the within-named defendant J. M. Jardine, duly authorized agent for the within-named defendant company.

J. C. RUTAN, *Sheriff.*

(The foregoing document was duly endorsed)

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court of the State of Colorado within *in* and for the County of Ouray.

JOHN ASHENFELTER, Plaintiff,
vs.
COSMOPOLITAN MINING CO., a Corporation, Defendant. } Writ of Attachment.

111 The People of the State of Colorado to the sheriff of the county of San Miguel, Greeting:

Whereas, *in* the above-entitled action was commenced in the county court of the State of Colorado in and for the said county of Ouray, by the plaintiff in the said action to recover from the defendant Cosmopolitan Mining Co. in the said action, the sum of forty-seven and 90/100 dollars, lawful money of the United States, besides interest at the rate of 8 per cent. per annum from the 31st day of December, A. D. 1894, and costs of suit; and the necessary affidavit and undertaking herein having been filed as required by law,

Now, we do therefore command you —— ——, the said sheriff, that you serve a copy hereof on the above defendant, if he *it* be found in your county, and also attach and safely keep all the property of said defendant within your said county, not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiff's demand, as above, and in the affidavit herein mentioned,

unless the said defendant deposit with you the amount or give you security by an undertaking of at least two sufficient securities, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached in which case you will take such undertaking; and hereof make due and legal service and return.

Witness, Rob't H. Wilson, judge & clerk of said court, [SEAL.] and the seal thereof, at Ouray, this 21st day of May, A. D. 1895.

(Signed) ROB'T H. WILSON,
Judge & Clerk,
By MARY F. WILSON,
Deputy Clerk.

112 STATE OF COLORADO, } ss:
San Miguel County, }

I do hereby certify that I have duly executed the within writ on this 23rd day of May, A. D. 1895, by delivering a true copy of the within to J. M. Jardine, duly authorized agent for the within-named defendant company.

J. C. RUTAN, *Sheriff.*

(The foregoing document was duly endorsed.)

OURAY, COLO., *May* 20, 1895.

M—Cosmopolitan Mg. Co., Hidden Treasure mine, to John Ashenfelter, Dr.

Forwarding and commission house, hay and grain.

For hauling supplies to Hidden Treasure mine & use of pack animals—during the months of June, July and December, 1894, 47.90.

STATE OF COLORADO, } ss:
Ouray County, }

In the County Court of the State of Colorado within and for the County of Ouray.

JOHN ASHENFELTER, Plaintiff,
vs.
COSMOPOLITAN MINING CO., a Corporation, Defendant. } Writ of Attachment.

113 The People of the State of Colorado to the sheriff of the said county of Ouray, Greeting:

Whereas, the above-entitled action was commenced in the county court of the State of Colorado in and for the said county of Ouray, by the plaintiff in the said action, to recover from the defendant Cosmopolitan Mining Co. in the said action the sum of forty-seven

and 90/100 dollars, lawful money of the United States, besides interest at the rate of 8 per cent. per annum from the 31st day of December, A. D. 1894, and costs of suit; and the necessary affidavit and undertaking herein having been filed as required by law;

Now, we do therefore command you —— ——, the said sheriff, that you serve a copy hereof on the above defendant, if it be found in your *county*, and also attach and safely keep all the property of said defendant within your said county, not exempt from execution or so much thereof as may be sufficient to satisfy the said plaintiff's demand, as above, and in the affidavit herein mentioned, unless the said defendant deposit with you the amount or give you security by an undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs or in an amount equal to the value of the property which has been or is about to be attached, in which case you will take such undertaking; and hereof make due and legal service, and return.

Witness: Rob't H. Wilson, judge & clerk of said court,
[SEAL.] and the seal thereof, at Ouray, this 21st day of May, A. D. 1895.

(Signed) ROBT H. WILSON,
Judge and Clerk.
By MARY F. WILSON,
Deputy Clerk.

STATE OF COLORADO, } ss:
Ouray County, }

114 I do hereby certify that I have duly executed the within writ on this 22nd day of May, A. D. 1895, by levying upon and attaching all the right, title, interest, claim and demand and equity of redemption of the Cosmopolitan Mining Company in and to the following real property, to wit the Yellow Rose lode, the Crusader lode, the Norma lode, the Talisman lode and the Hidden Treasure lode, the Gertrude lode and the Emily Lode mining claims, situate in Imogene basin, *Mt.* Sneffles mining district, county of Ouray and State of Colorado, and also the mill sites and each and every of them in said basin, district, county, and State, to said lodes and each and every of them belonging, which said lodes and mill sites are more accurately described in detail and identified by metes and bounds in the book of record in and for the recorder's office of the said county of Ouray and State of Colorado, and to which reference is hereby made. And I further certify that I have filed a true copy of this levy and attachment for record with the clerk and recorder in and for said Ouray county, Colorado.

MAURICE CORBETT, *Sheriff.*

(The foregoing document was duly endorsed.)

STATE OF COLORADO, } ss:
County of Ouray, }

The People of the State of Colorado to the sheriff of Ouray county, Greeting:

Whereas, by virtue of a certain writ of attachment, issued out of our county court on the 21 day of May, A. D. 1895, and that on the 22d day of May, 1895, you levied upon the "Yellow Rose" lode; "Crusader" lode; "Norma" lode; "Talisman" lode; "Hidden Treasure" lode; "Gertrude" lode; and "Emily" lode; situate in Imogene basin, Mt. Sneffles mining district county & State aforesaid, also the mill sites thereof, more particularly described in the location certificates thereof, of record with the clerk and
115 recorder of said Co. and State as the property of the Cosmopolitan Mining Co. as appears by your certificate of levy, filed and recorded in this office; and

Whereas, afterward, to wit, on the 27" day of June, A. D. 1895, by the consideration of our county court, John Ashenfelter recovered judgment against the said The Cosmopolitan Mining Co. for the sum of forty-nine 82/100 dollars damages, and also the further sum of twenty-two 70/100 dollars, costs of suit, as appears of record.

We therefore command you, that you immediately proceed to sell the property by you levied upon, as hereinbefore described, or so much thereof as is necessary to make the aforesaid sums of money, with interest on said judgment from the day of the rendition of the same; and have the same money ready as soon as may be, to render unto the said court for adjustment among the several judgment creditors in proportion to the amount of their respective claims according to law.

Hereof fail not, and make return of this writ, with your doings indorsed thereon in ninety days from the date hereof.

Witness, Rob't H. Wilson, judge and clerk of said
[SEAL.] county court, and the seal thereof hereto affixed, at Ouray, this 23" day of July, A. D. 1895.

ROBT H. WILSON,
Judge & Clerk,
By —— ——, *Deputy.*

STATE OF COLORADO, } ss:
County of Ouray, }

I hereby return the within execution fully satisfied in accordance with my return made on the execution issued in the case of the A. W. Begole Mercantile Company *vs.* The Cosmopolitan Mining Company.

MAURICE CORBETT, *Sheriff.*

116 (The foregoing document was duly endorsed.)

STATE OF COLORADO, } ss:
Ouray County, }

In the County Court in and for said County.

JOHN ASHENFELTER, Plaintiff,
—
COSMOPOLITAN MNG. CO., Defendant. } Precipe for Execution.

To Rob't H. Wilson, judge & clerk of said court:

You will please issue special execution in the above-entitled cause, and this shall be your warrant therefor.

Dated this 23rd day of July, A. D. 1895.

(Signed) EMERSON & BRADSHAW,
Plaintiff's Attorney.

(The foregoing document was duly endorsed.)

(Then follow the default and judgment which have appeared hereinbefore as part of Exhibit 8.)

In the Ouray County Court, —— Term, A. D. 18—.

No.	Parties.	Action.	Attorneys.
1439	John Ashenfelter *v.* Cosmopolitan Mining Company, a corporation.	Attachment on account.	Emerson and Bradshaw.

Date.	Papers filed, &c.	Plaintiff's costs.			Memoranda.
		Clerk's.	Sheriff's.	Credits.	
May 21	To filing complaint & affidavit	37½			Judgment.'
	" filing and approving bond	112½			
	" affidavit and filing	37½			
	" issuing summons and	100			
	2 attachment writs & cop-es of same	310			
	" index	10			
	" fee bill	75			
117	" 2 dockets	40			
	" appearance	25			
May 28	To filing 2 papers	25	772½		
" 31	By cash			600	
June 27	To hearing	4			
	" default	60			
	" judgment	80			
	" swearing witness	12½			
	" trans. on J. D.	60	1385		
	" filing paper	12½			
	By cash			797½	
July 23	To execution and precipe	262		262	
1900.					
Oct. 31st	Transcript	976¼		976¼	

(Fee Book "C," page 294.)

(Then follows the transcript of the judgment docket which has appeared hereinbefore as part of Exhibit 8.)

(All of which was duly certified by the clerk of the county court of Ouray county.)

The supplement in the record in Exhibit 9 (which supplement is now marked Exhibit 19, for convenience, although at the time of the trial it was not given a new number) consists of the following documents.

EXHIBIT 19.

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court Thereof.

THE A. W. BEGOLE MERCANTILE COMPANY, a Corporation, Plaintiff,
vs.
THE COSMOPOLITAN MINING COMPANY, a Corporation, Defendant.
} Complaint.

The plaintiff complains and alleges:

I. That the amount involved in this action for which relief is sought does not exceed the sum of two thousand dollars.

118 II. That the plaintiff is a corporation duly incorporated and organized under and by virtue of the laws of the State of Colorado and at all times hereinafter mentioned has been such corporation doing business in the city of Ouray, county of Ouray and State aforesaid.

III. That the defendant is a corporation duly incorporated and organized under and by virtue of the laws of the State of Maine, with its principal office in the State of Colorado at Ouray, in said Ouray county.

And for a first cause of action against the defendant the plaintiff alleges:

I. That on or about the 24th day of July, 1894, the defendant was indebted to plaintiff for and upon an account for goods, wares, and merchandise sold and delivered by plaintiff to defendant, at defendant's special instance and request, in the sum of $137.32, said goods, wares, and merchandise being furnished between the 8th day of May, 1894, and the date last aforesaid.

II. That the said sum of $137.32 has not been paid nor any part thereof, and the same is now due and owing from defendant to plaintiff, together with interest thereon at the rate of eight per cent. per annum from the said 24th day of July, 1894.

And for a second cause of action against the defendant the plaintiff alleges:

I. That on or about the 1st day of January, 1895, the defendant was indebted to the San Juan Hardware Company, a corporation doing business in the said city and county of Ouray, in the sum of

$75.70, for and upon an account for goods, wares, and merchandise sold and delivered by the said San Juan Hardware Company to the defendant, at defendant's special instance and request, between the 17th day of May, 1894, and the date last aforesaid.

II. That on or about the 25th day of April, 1895, the said
119 The San Juan Hardware Company, assigned, transferred, and set over to this plaintiff said account for collection.

III. That the said sum of $75.70 has not been paid nor any part thereof, and the same is now due and owing from the defendant together with interest thereon at the rate of eight per cent. per annum from the 1st day of January, 1895.

Wherefore plaintiff demands judgment against the defendant.

1. For the sum of $137.32, together with interest thereon from the 24th day of July, 1894, as in the first cause of action herein set forth.

2. For the sum of $75.70, together with interest thereon from the 1st day of January, 1895, as in the second cause of action herein set forth.

3. For costs of suit, and for such other relief as to this court may seem meet and proper.

(Signed) EMERSON & BRADSHAW,
Attorneys for the Plaintiff.

(Above document was duly verified, and endorsed.)

STATE OF COLORADO, } ss:
Ouray County, }

In the County Court in and for the County of Ouray, in the State Aforesaid.

THE A. W. BEGOLE MERCANTILE Company, a Corporation, Plaintiff, vs. THE COSMOPOLITAN MINING Company, a Corporation, Defendant. } Undertaking on Attachment.

Whereas, the above-named plaintiff has commenced, or is about to commence an action in the county court in and for the county of Ouray in the State aforesaid, against the above-named defendant, upon a contract for the direct payment of money, claim-
120 ing that there is due to the said plaintiff from the said defendant the sum of two hundred thirteen and 02/100 dollars lawful money of the United States, besides interest, and is about to apply for an attachment against the property of the said defendant as security for the satisfaction of any judgment that may be recovered therein.

Now, therefore, we the undersigned, residents of the county of Ouray, State of Colorado, in consideration of the premises, and of the issuing of said attachment, do jointly and severally undertake in the sum of four hundred seventy-five dollars and promise to the effect, that if the said defendant recover judgment in said action, or if the said court shall finally decide that the said plaintiff was not

entitled to an attachment, the said plaintiff will pay all costs that may be awarded to the said defendant and all damages which it may sustain by reason of the wrongful suing out of the said attachment, not exceeding the sum of four hundred seventy-five dollars.

Dated this 26th day of April, A. D. 1895.

(Signed) A. W. BEGOLE MERC. CO.
(Signed) J. C. MARSH, *Pres't.*
J. C. LANGLEY.

(On the back of the foregoing document was a form of jurat, but same was not filled out. Document was duly endorsed.)

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court within and for the County of Ouray Aforesaid.

THE A. W. BEGOLE MERCANTILE COMPANY, a Corporation, Plaintiff,
versus
THE COSMOPOLITAN MINING COMPANY, a Corporation, Defendant.

121 J. C. Marsh, president of the plaintiff corporation of said county, being duly sworn, doth depose and say that The Cosmopolitan Mining Company against whom the said The A. W. Begole Mercantile Company is about to sue out an attachment is indebted to him in a sum not exceeding twenty hundred dollars, to wit, the sum of two hundred thirteen and 02/100 dollars with interest; and that the said demand is now due and owing, and that sum is due and owing from the defendant to the plaintiff for and upon an overdue book account for goods, wares, and merchandise sold and delivered by the plaintiff to the defendant, at defendant's special instance and request, between the 8th day of May 1894, and the 24th day of July, 1894, amounting to $137.32; and upon an overdue book account for goods, wares, and merchandise sold and delivered by the San Juan Hardware Company to defendant at defendant's special instance and request, between the 17th day of May, 1894, and the 1st day of January, 1895, amounting to $75.70, and by the said The San Juan Hardware Company assigned to the plaintiff herein for collection.

(Signed) J. C. MARSH.

Sworn and subscribed to before me this 26th day of April, A. D. 1895.

ROB'T H. WILSON,
Judge & Clerk,
By MARY F. WILSON,
Dep. Clerk.

[SEAL.]

(Above document was duly endorsed.)

(Then follows the writ of attachment and the return thereon, which has appeared hereinbefore as part of Exhibit 10.)

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court.

122 THE A. W. BEGOLE MERCANTILE COMPANY, a Corporation, Plaintiff,
vs.
THE COSMOPOLITAN MINING COMPANY, a Corporation, Defendant. } Summons.

The People of the State of Colorado to The Cosmopolitan Mining Company, a corporation, the defendant above named, Greeting:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the county court of Ouray county, State of Colorado, and answer the complaint therein within twenty days after the service hereof, if served within this county; or, if served out of this county, or by publication, within thirty days after the service hereof, exclusive of the day of service; or judgment by default will be taken against you according to the prayer of the complaint. And if a copy of the complaint in the above-entitled action be not served with this summons, or if the service hereof be made out of this State, then ten days additional to the time hereinbefore specified for appearance and answer will be allowed before the taking of judgment by default as aforesaid.

The said action is brought to recover the sum of $137.32, with interest for goods, wares, and merchandise sold and delivered by plaintiff to defendant; and the further sum of $75.70, with interest for goods, wares, and merchandise sold and delivered by the San Juan Hardware Company to defendant, and by the said hardware company assigned to this plaintiff for collection and for costs of suit, as will more fully appear from the complaint in said action to which reference is here made: *

And you are hereby notified that if you fail to appear, and
123 to answer the said complaint as above required, the said plaintiff will take judgment by default against you in accordance with the prayer of said complaint.

[SEAL.] Given under my hand and the seal of said court at Ouray in said county, this 29th day of April, A. D. 1895.

ROB'T H. WILSON,
Judge & Clerk.
MARY F. WILSON,
Dep. Clerk.

(Index) *A copy of which is hereto attached.

STATE OF COLORADO, } ss:
County of San Miguel, }

I do hereby certify that I have duly served the within summon-, together with a copy of the complaint in the within-stated action, on this 7th day of May, A. D. 1895, by personally delivering a true

copy of said summons, together with a copy of the original complaint in the action therein mentioned, thereto attached, to J. M. Jardine, the duly authorized agent of the within defendant company.

J. C. RUTAN, *Sheriff.*

(The foregoing document was duly endorsed.)

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court within and for the County of Ouray, State of Colorado.

THE A. W. BEGOLE MERCANTILE COMPANY, a Corporation, Plaintiff,
vs.
THE COSMOPOLITAN MINING COMPANY, a Corporation, Defendant.
} Writ of Attachment.

124 The People of the State of Colorado to the sheriff of the county of San Miguel, Greeting:

Whereas, the above-entitled action was commenced in the county court in and for the said county of Ouray in the State of Colorado, by the plaintiff in the said action to recover from the defendant Cosmopolitan Mining Co. in the said action the sum of two hundred thirteen and 02/100 dollars, lawful money of the United States, besides interest at the rate of 8 per cent. per annum from the — day of —— A. D. 189–, and costs of suit; and the necessary affidavit and undertaking herein having been filed as required by law.

Now, we do therefore command you, the said sheriff that you serve a copy hereof on the above defendant if he be found in your county, and also attach and safely keep all the property of said defendant Cosmopolitan Mining Co. within your said county, not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiff's demand, as above mentioned; unless the said defendant deposit with you an amount, or give you security by an undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached; in which case you will take such undertaking and hereof make due and legal service and return.

Witness my hand as the clerk of said court, and the seal thereof at Ouray this 29th day of April, A. D. 1895.

ROB'T H. WILSON,
Judge & Clerk,
By MARY F. WILSON,
Deputy Clerk.

STATE OF COLORADO, } ss:
San Miguel County, }

I do hereby certify that I have duly executed the within writ on this 7th day of May, A. D. 1895, by delivering a true copy of the

within writ to J. M. Jardine, the duly authorized agent of the within defendant company.

J. C. RUTAN, *Sheriff.*

125 (The foregoing document was duly endorsed.)

(Then follows motion to quash service of summons, which appears in full in the rebuttal testimony as Exhibit R.)

STATE OF COLORADO, } ss:
Ouray County, }

In the County Court in and for said County.

THE A. W. BEGOLE MERCANTILE COMPANY, a Corporation, Plaintiff,
—
COSMOPOLITAN MINING COMPANY, a Corporation, Defendant. } Default and Judgment.

The defendant Cosmopolitan Mining Company, having failed to appear and answer, move or demur to the complaint in this action, according to law, as required by the summons, the plaintiff hereby applies for default and entry of judgment.

Dated this 14th day of June, A. D. 1895.

To Rob't H. Wilson, judge of said court.

(Signed) EMERSON & BRADSHAW,
Plaintiff's Attorney.

(The foregoing default and judgment was duly endorsed.)

M—Hidden Treasure M'n'g Co. bought of the A. W. Begole Mercantile Co., grocers.

Terms cash.

1894.		
7/23.	To mdse. as per bill rendered	137.32
	Interest to date	8.25
		145.57

(Lead pencil.)
May 9 to July 23 '94 incl.

(Lead pencil.)	137.32
	75.70
	213.02

126 (On the back of this document was the endorsement.)

665. OURAY, COLO., *April* 25, 1895.

M—Hidden Treasure Mining Co. bought of the San Juan Hardware Co.—Alva Adams, president; Wm. Bayly, manager—manufacturers of copper & tinware; miners' supplies and agents for Hercules & giant powders.

Durango.	Ouray.		Telluride.
Mdse. from May 18th, '94	.....	75.70	
Interest to date	.....	9.45	
		85.15	

We hereby assign the above account to the Begole Mer. Co. for collection.

(Signed) SAN JUAN HARDWARE CO.

(On the back of this document was the endorsement.)

(Then follows levy of writ of attachment, which has appeared hereinbefore as part of Exhibit 10.)

STATE OF COLORADO, } ss:
Ouray County, }

The People of the State of Colorado to the sheriff of Ouray county, Greeting:

Whereas, by virtue of a certain writ of attachment, issued out of our county court on the 26 day of April, A. D. 1895, and that on the 26 day of April 1895, you levied upon the "Yellow Rose" lode; "Crusader" lode; "Norma" lode; "Talisman" lode; "Hidden Treasure" lode; "Gertrude" lode; and "Emily" lode, in Imogene basin Mt. Sneffles mining district said Co. and State. Also the mill sites thereof. Particularly described in the location certificates thereof, on record with the clerk and recorder of said county and State as the property of the Cosmopolitan Mining Company
127 as appears by your certificate of levy, filed and recorded in this office; and whereas, afterward, to wit, on the 27 day of June, A. D. 1895, by the consideration of our county court, the A. W. Begole Mercantile Co. recovered judgment against the said The Cosmopolitan Mining Company for the sum of two hundred twenty-six 09/100 dollars, damages, and also the further sum of twenty-four 58/100 dollars, costs of suit, as appears of record.

We therefore command you, that you immediately proceed to sell the property by you levied upon, as hereinbefore described or so much thereof as is necessary to make the aforesaid sums of money, with interest on said judgment, from the day of the rendition of the same; and have the same money ready, as soon as may be, to render unto the said court for adjustment according to law allowing the several judgment creditors in proportion to the amount of their several claims as adjusted.

Hereof fail not and make return of this writ, with your doings endorsed thereon in ninety days from the date hereof.

Witness, Rob't H. Wilson, judge and clerk of said county court and the seal thereof at Ouray this 23 day of July, A. D. 1895.

[SEAL.] ROB'T H. WILSON,
Judge and Clerk.

STATE OF COLORADO, } ss:
Ouray County, }

In obedience to the command of the within execution, I have executed the within writ by offering for sale on the 24th day of August, 1895, in the manner provided by law, and selling the property described in said writ, at public sale at the front door of the court-house in the city and county of Ouray, Colo., that said mining claims were first offered for sale separately; receiving no bids on said claims I offered the same for sale all together. That in accordance with an agreement entered into by and among the several prorating judgment creditors, the same was struck off and sold to J. C.
128 Marsh, as trustee, for the several judgment creditors for the sum of $1616.97; and I therefore return this execution fully satisfied.

(Signed) MAURICE CORBETT, *Sheriff.*

(The foregoing document was duly endorsed.)

(Then follows the default and judgment which has appeared hereinbefore as part of Exhibit 9.)

STATE OF COLORADO, } ss:
Ouray County, }

In the County Court.

THE A. W. BEGOLE MERC. CO., Plaintiff,
vs.
THE COSMOPOLITAN MINING CO., Defendant. } Prorating Order.

Now on this day this cause comes on to be heard on motion of Emerson & Bradshaw, attorneys for the above-named plaintiff, for an order prorating the amount to be realized from the sale of the attached property by the several attaching and judgment creditors, and it appearing to the court that the following judgments have been rendered and entered against the Cosmopolitan Mining Co. under and by virtue of the several attachments issued out of this court as follows, to wit:

The A. W. Begole Merc. Co. $226.09, John Ashenfelter $49.82, P. H. Fennell $126.12, W. C. Fulton $1049.90, and D. L. Golden $—.

And it further appearing to the court that in said suit property belonging to the defendant Co. was attached for the purpose of satisfying such judgments as might be obtained by the several plaintiffs against the said defendant company.

129 It is therefore ordered that the sheriff of Ouray county proceed to sell the above-described property or so much

thereof as shall be necessary to satisfy said several judgments, together with the costs and interest thereon.

And it is further ordered that in case the sum realized from such sale shall not be sufficient to satisfy said several judgments, interest, and costs in full, that then the amount realized from said sale shall be appropriated as follows, to wit:—

First. To the payment of all costs connected with the said several suits and proceedings.

Second. The amount remaining to be prorated and paid to the said several judgment creditors in accordance with the amounts of the said several judgments entered herein, save and except as to the judgment obtained by D. L. Golden; and with respect to said judgment it appearing to the court that a telegram dated Denver, August 16, '95, was received by the above-named plaintiff and signed by the said Golden stating that his judgment had been settled; it is ordered by the court that the sale of said property and that this prorating order shall not extend to or include said judgment of the said D. L. Golden, but that the same shall stand in abeyance until the further order of this court in the premises.

Witness, Rob't H. Wilson, judge and clerk of said court, this — day of ——, 1895.

In the Ouray County Court, March Term, A. D. 1895.

No.	Parties.	Action.	Attorneys.
1437	The A. W. Begole Mercantile Co., a corporation, *vs.* The Cosmopolitan Mining Company, a corporation.	Attachment on account.	Emerson & Bradshaw.

Date.	Papers filed, &c.	Plaintiff's costs.			Memoranda.
		Clerk's.	Sheriff's.	Credits.	
April 26	To filing complaint & affidavit	37½		500	Judgment.
	To approving bond & filing	112½			
	To filing affidavit in attach	12½			
	To swearing to same	25			
	To issuing writ & copy	155			
	To appearance	25			
	To two dockets	40			
	To index	10			
	To fee bill	75			
" 29	To issuing summons & copy	100			
	To issuing attachment & copy	155	747½		
June 27	To hearing	4.			
	" default	60			
	" judgment	80			
	" swearing 1 witness	12½			
	" trans. on J. D.	60			
	" filing 7 papers to date	87½	1447½		
	By cash			947½	
July 23	To execution and præcipe	262			
"	By cash			262	
1900. Oct. 31st	Transcript	976½		976½	

(Fee Book "C," page 292.)

(Then follows the transcript of the judgment docket which has appeared hereinbefore as part of Exhibit 9.)

(All of which was duly certified by the clerk of the county court of Ouray county.)

The supplement in the record in Exhibit 11 (which supplement is now marked Exhibit 21, for convenience, although at the time of the trial it was not given a new number) consists of the following documents:

131 EXHIBIT 21.

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court.

P. H. FENNELL, Plaintiff,
vs.
COSMOPOLITAN MINING COMPANY, Defendant. } Complaint.

Plaintiff complains and alleges:

I. That the amount involved in this action and for which relief is sought does not exceed the sum of two thousand dollars.

II. That the defendant is a corporation duly incorporated and organized under and by virtue of the laws of the State of Maine, with its principal office in the State of Colorado at Ouray, in said Ouray county.

And for a first cause of action against the defendant the plaintiff alleges:

I. That on or about the 1st day of August, 1894, the defendant was indebted to the plaintiff for and upon an account for work and labor done and performed by said plaintiff for defendant, at defendant's special instance and request, between the 30th day of June, 1894, and the date last aforesaid, in the sum of $58.75.

II. That the said sum of $58.75 has not been paid nor any part thereof, and the same is now due and owing from defendant to plaintiff with interest thereon at the rate of 8 % per annum from the 1st day of August, 1894.

And for a second cause of action against the defendant plaintiff alleges:

I. That on or about the 1st day of August, 1894, defendant was indebted to one John Dowd in the sum of $58.75, for and upon an account for work and labor done and performed by the said
132 Dowd for defendant, at defendant's special instance and request, between the 30th day of June, 1894, and the date last aforesaid.

II. That on or about the 22nd day of May, 1895, the said Dowd assigned, transferred, and set over said account to this plaintiff for collection.

III. That the said sum of $58.75 has not been paid nor any part thereof, and the same is now due and owing to this plaintiff from defendant together with interest thereon at the rate of eight per cent. per annum from the 1st day of August, 1894.

IV. That on or about the 26th day of April, 1895, suit was commenced against the defendant herein by the A. W. Begole Mercantile Company in this court, wherein a writ of attachment was issued out of this court and a levy made thereunder by the sheriff of said Ouray county, attaching all of the real property of said defendant found in said county.

Wherefore plaintiff demands judgment against the defendant.

1. For the sum of $58.75, together with interest thereon at the rate of 8% per annum from the 1st day of August, 1894, as in the first cause of action herein set forth.

2. For the sum of $58.75, together with interest thereon at the rate of 8% per annum, as in the second cause of action herein set forth.

3. For costs of this action, and for general relief.

4. And plaintiff asks the court further that he be made a party plaintiff in the said suit hereinabove mentioned and be given like remedies against the defendant herein as the law gives to the original plaintiff in the said action.

(Signed) EMERSON & BRADSHAW,
Attorneys for Plaintiff.

(Which complaint was duly verified.)
(The foregoing document was duly endorsed.)

133 STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court in and for the County of Ouray, in the State Aforesaid.

P. H. FENNELL, Plaintiff,
vs.
COSMOPOLITAN MINING COMPANY, a Corporation, Defendant. } Undertaking on Attachment.

Whereas, the above-named plaintiff has commenced or is about to commence an action in the county court in and for the county of Ouray, in the State aforesaid, against the above-named defendant upon a contract for the direct payment of money, claiming that there is due to the said plaintiff from the said defendant the sum of one hundred seventeen 50/100 dollars lawful money of the United States, besides interest, and said plaintiff is about to apply for an attachment against the property of the said defendant as security for the satisfaction of any judgment that may be recovered therein.

Now, therefore, we, the undersigned, residents of the county of Ouray, State of Colorado, in consideration of the premises, and of the issuing of said attachment, do jointly and severally undertake in the sum of two hundred fifty dollars and promise to the effect that if the said defendant recover judgment in said action, or if the said court shall finally decide that the said plaintiff was not entitled to an attachment, the said plaintiff will pay all costs that may be awarded to the said defendant and all damages which it may sustain by reason of the wrongful suing out of the said attachment, not exceeding the sum of two hundred fifty dollars.

Dated this 23rd day of May A. D. 1895.

(Signed) T. W. KNOWLES.
(") W. H. FOURRELL.

134 (On the back of the foregoing document was a form of jurat but not filled out. The document was duly endorsed.)

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court within and for the County of Ouray Aforesaid.

P. H. FENNELL, Plaintiff,
versus
COSMOPOLITAN MINING COMPANY, a Corporation, Defendant.

Thomas Y. Bradshaw of said county, being duly sworn, doth depose and say that he is one of plaintiff's attorneys in the above action; that the Cosmopolitan Mining Company, against whom the said P. H. Fennell is about to sue out an attachment, is indebted to him in a sum not exceeding twenty hundred dollars, to wit: the sum of one hundred seventeen and 50/100 dollars and interest; and that the said demand is now wholly due and unpaid and that the same is for and upon account of work and labor done and performed by plaintiff for defendant, at defendant's special instance and request, in the sum of 58.75, and for work and labor done and performed as aforesaid for defendant, at defendant's special instance and request, by one John Dowd in the sum of 58.75, and said last-named claim has been by said John Dowd assigned to plaintiff herein for collection, all of said work and labor being done and performed during the month of July, 1894; and which should have been paid for at the time of the completion of such work.

(Signed) THOMAS Y. BRADSHAW.

Sworn and subscribed to before me, this 23rd day of May, A. D. 1895.

ROB'T H. WILSON,
Judge and Clerk,
[SEAL.] By MARY F. WILSON, *Dep. Clerk.*

135 (The foregoing document was duly endorsed.)

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court.

P. H. FENNELL, Plaintiff,
vs.
COSMOPOLITAN MINING COMPANY, a Corporation, Defendant. } Summons.

The People of the State of Colorado to Cosmopolitan Mining Co., the defendant above named, Greeting:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the county court, of Ouray county, State of Colorado, and answer the complaint therein within twenty days after the service hereof, if served within this county, or, if served out of this county, or by publication, within thirty days after the service hereof, exclusive of the day of service; or judgment

by default will be taken against you according to the prayer of the complaint. And if a copy of the complaint in the above-entitled action be not served with this summons, or if the service hereof be made out of this State, then ten days additional to the time hereinbefore specified for appearance and answer will be allowed before the taking of judgment by default as aforesaid.

The said action is brought to recover from the defendant the sum of $117.50, and interest thereon from the 1st day of August, 1894, at 8 % per annum, amount alleged to be due the plaintiff from the defendant to the plaintiff for and upon an account for work and labor done and performed by said plaintiff for defendant, at defendant's special instance and request, between the 1st day of June, 1894, and the 1st day of August, 1894, in the sum of $58.75; and also the sum of $58.75 due to one John Dowd for and upon an account for
136 work and labor done and performed as aforesaid between the dates aforesaid, and by the said John Dowd assigned to this plaintiff for collection, as will more fully appear from the complaint in said action to which reference is here made. *

And you are hereby notified that if you fail to appear, and to answer the said complaint as above required the said plaintiff will take judgment against you by default in accordance with the prayer of said complaint.

[SEAL.] Given under my hand and the seal of said court at Ouray in said county, this 23rd day of May, A. D. 1895.

ROBT H. WILSON,
Judge and Clerk,
By MARY F. WILSON,
Dep. Clerk.

(Index) *A copy of which is hereto attached.

STATE OF COLORADO, }
County of San Miguel, } ss:

I do hereby certify that I have duly served the within summons, together with a copy of the complaint in the within-stated action, on this 27th day of May, A. D. 1895, by personally delivering a true copy of said summons, together with a copy of the original complaint in the action therein mentioned, thereto attached, to J. M. Jardine, he being the duly authorized agent for the within-named defendant company.

J. C. RUTAN, *Sheriff.*

(The foregoing document was duly endorsed.)

STATE OF COLORADO, } ss:
Ouray County, }

In the County Court within and for the County of Ouray, in the State of Colorado.

137 P. H. FENNELL, Plaintiff,
vs.
COSMOPOLITAN MINING COMPANY, a Corporation, Defendant. } Writ of Attachment.

The People of the State of Colorado to the sheriff of the county of San Miguel, Greeting:

Whereas the above-entitled action was commenced in the county court in and for the said county of Ouray, in the State of Colorado, by the plaintiff in the said action to recover from the defendant Cosmopolitan Mining Co., in the said action, the sum of one hundred seventeen and 50/100 dollars, lawful money of the United States, besides interest at the rate of 8 per cent. per annum from the 1st day of August, A. D. 1894, and costs of suit; and the necessary affidavit and undertaking herein having been filed as required by law;

Now, we do therefore command you, the said sheriff that you serve a copy hereof on the above defendant, if it be found in your county, and also attach and safely keep all the property of said defendant within your said county not exempt from execution or so much thereof as may be sufficient to satisfy the said plaintiff's demand, as above, and in the affidavit herein mentioned, unless the said defendant deposit with you the amount or give you security by an undertaking of at least two sufficient sureties in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached; in which case you will take such undertaking and hereof make due and legal service and return.

Witness, Rob't H. Wilson, judge & clerk of said court, and the seal thereof, at Ouray aforesaid, his 23rd day of May, A. D. 1895.

(Signatures next page.)

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ROBT H. WILSON,
Judge and Clerk,
By MARY F. WILSON,
Deputy Clerk.

[SEAL.]

STATE OF COLORADO, } ss:
San Miguel County, }

I do hereby certify that I have duly executed the within writ on this 27th day of May, A. D. 1895, by delivering a true copy of same to J. M. Jardine, he being the duly authorized agent for the within-named defendant company.

J. C. RUTAN, *Sheriff.*

(The foregoing document was duly endorsed.)

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court within and for the County of Ouray, State of Colorado.

P. H. FENNELL, Plaintiff,
vs.
COSMOPOLITAN MINING COMPANY, a Corporation, Defendant. } Writ of Attachment.

The People of the State of Colorado to the sheriff of the said county of Ouray, Greeting:

Whereas, the above-entitled action was commenced in the county court in and for the said county of Ouray in the State of Colorado by the plaintiff in the said action to recover from the defendant, Cosmopolitan Mining Co. in the said action the sum of one hundred seventeen and 50/100 dollars, lawful money of the United States, besides interest at the rate of 8 per cent. per annum from the 1st day of August, A. D. 1894, and costs of suit; and the necessary affidavit and undertaking herein having been filed as required by law.

Now, we do therefore command you, the said sheriff, that
139 you serve a copy hereof on the above defendant, if it be found in your county, and also attach and safely keep all the property of said defendant within your said county, not exempt from execution or so much thereof as may be sufficient to satisfy the said plaintiff's demand, as above mentioned; unless the said defendant deposit with you an amount or give you security by an undertaking of at least two sufficient sureties in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been, or is about to be attached; in which case you will take such undertaking, and hereof make due and legal service and return.

Witness Rob't H. Wilson, judge & clerk of said court, and the seal thereof at Ouray, this 23rd day of May, A. D. 1895.

ROBT H. WILSON,
Judge & Clerk,
By MARY F. WILSON,
Deputy Clerk.

[SEAL.]

STATE OF COLORADO, } ss:
Ouray County, }

I do hereby certify that I have duly executed the within writ on this 23rd day of May, A. D. 1895, by levying upon and attaching all the right, title, interest, claim, and demand, and equity of redemption of the Cosmopolitan Mining Company in and to the following-described real property to wit: The Yellow Rose lode; the Crusader lode; the Norma lode; the Talisman lode; the Hidden Treasure lode; the Gertrude lode, and the Emily Lode mining claims, situated

in Imogene basin, Mr. Sneffles mining district, county of
140 Ouray and State of Colorado; and also the mill sites and each and every of them in said basin, district, county and State, and to said lodes and each and every of them belonging, which said lodes and mill sites are more accurately described in detail and identified by metes and bounds in the books of record in and for the recorder's office of the said county of Ouray and the State of Colorado, to which records reference is hereby made.

And I further certify that I have further executed the within writ by delivering a true copy hereof to and filing the same with the clerk and recorder of said Ouray county.

MAURICE CORBETT, *Sheriff.*

(The foregoing document was duly endorsed.)

STATE OF COLORADO, } *ss:*
Ouray County, }

The People of the State of Colorado to the sheriff of Ouray county, Greeting:

Whereas, by virtue of a certain writ of attachment, issued out of our county court on the 23rd day of May, A. D. 1895, and that on the 23rd day of May, 1895, you levied upon the Yellow Rose lode, Crusader lode, Norma lode, Tailsman lode, Hidden Treasure lode, Gertrude lode, and the Emily lode, all situated in Imogene basin Mt. Sneffles mining district, county and State aforesaid all *all* mill sites thereunto belonging, more particularly described in the location certificates thereof on record with the clerk & recorder of said county & State as the property of the Cosmopolitan Mining Co., as appears by your certificate of levy, filed and recorded in this office; and whereas, afterward, to wit, on the 10th day of July, A. D. 1895, by the consideration of our county court, P. H. Fennell recovered judgment against the said The Cosmopolitan Mining Co. for the sum of one hundred and twenty-six and 12/100 dollars damages, and also the further sum of twenty-two 82/100 dollars costs of suit, as appears of record.

141 We therefore command you, that you immediately proceed to sell the property by you levied upon, as hereinbefore described, or so much thereof as is necessary to make the aforesaid sums of money, with interest on said judgment from the day of the rendition of the same; and have the said money ready, as soon as may be, to render unto the said court for adjustment among the several judgment creditors in proportion to the amount of their respective claims according to law.

Hereof fail not, and make return to this writ, with your doings endorsed thereon in ninety days from the date hereof.

Witness, Rob't H. Wilson, judge and clerk of our said county court, and the seal thereof, at Ouray this 23rd day of July, A. D. 1895.

ROBT H. WILSON,
[SEAL.] *Judge & Clerk.*

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STATE OF COLORADO, } ss:
Ouray County, }

I hereby return the within execution fully satisfied in accordance with my return made on the execution issued in the case of The A. W. Begole Mercantile Company *vs.* The Cosmopolitan Mining Company, this 30th day of September, 1895.

(Signed) MAURICE CORBETT, *Sheriff.*

(The foregoing document was duly endorsed.)

OURAY, COLO., *Aug.* 1*st*, 1894.

Due P. H. Fennell 23½ days' work in month of July at 2.50 per day fifty-eight 75/100.

$58.75. COSMOPOLITAN MINING CO.

(Signed) D. L. GOLDEN, *Supt.*

(Endorsed on the back as follows:—)

Filed July 10" 1895,

ROB'T H. WILSON,

142 *Judge & Clerk.*

OURAY, COLO., *Aug.* 1*st*, 1894.

Due John Dowd 23½ days in July at 2.50 per day fifty-eight 75/100.

$58.75. COSMOPOLITAN MINING CO.

(Signed) D. L. GOLDEN, *Supt.*

(Endorsed on the back as follows:)

DENVER, COLO., *May* 22, 1895.

For value received I hereby assign, transfer, and set over the within claim to P. H. Fennell for collection.

——— ———.

Filed July 10" 1895.

ROB'T H. WILSON,
Judge & Clerk.

STATE OF COLORADO, } ss:
Ouray County, }

In the County Court in and for said County.

P. H. FENNELL, Plaintiff, }
vs. } Præcipe for Execution.
COSMOPOLITAN M'N'G CO., Defendant. }

To Rob't H. Wilson, judge & clerk of said court:

You will please issue special execution in the above-entitled cause and this shall be your warrant therefor.

Dated this 23rd day of July, A. D. 1895.

(Signed) EMERSON & BRADSHAW,
Plaintiff's Attorney.

(The foregoing document was duly endorsed.)

143 (Then follow the default and judgment which have heretofore appeared in the record as part of Exhibit 11.)

In the County Court, —— Term, A. D. 18—.

No.	Parties.	Action.	Attorneys.
1440	P. H. Fennell *vs.* Cosmopolitan Mining Company, a corporation.	Attachment on account.	Emerson & Bradshaw.

Date.	Papers filed, &c.	Plaintiff's costs.			Memoranda.
		Clerk's.	Sheriff's.	Credits.	
May 23	To filing and approving bond	11.25			Judgment.
	" affidavit and filing	3.75			
	" issuing summons and copy	1.00			
	" issuing two attachment writs	2.50			
	" issuing two copies of same	.60			
	" index	.10			
	" fee bill	.75			
	" 2 dockets	.40			
	" appearance	.25			
May 24	" filing comp. & veri.	3.75			
" 29	By cash pr. Knowles			5.00	
" 31	To filing 2 papers	.25			
July 10	" " " "	.25			
	" hearing	.4			
	" default	.60			
	" judgment	.80			
	" swearing witness	1.25			
	" trans. on J. D.	.60	14.10		
July 23	" execution and præcipe	2.62			
	By cash pr. Knowles			9.10	
Aug. 13 1900.	" " " Fennel			2.60	
Oct. 31	Transcript	9.76½		9.76½	

(Then follows transcript of judgment docket, which has heretofore appeared in the record as a portion of Exhibit 11.)

(All of which was duly certified by the clerk of the county
144 court of Ouray county.)

The supplement in the record to Exhibit 12, which supplement is marked Exhibit 18, consists of the following documents:—

EXHIBIT 18.

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court.

WILLIAM C. FULTON, Pl'ff.
vs.
THE COSMOPOLITAN MINING COMPANY, a Corporation, Defendant. } Complaint.

Plaintiff complains and alleges:

1st. That the amount involved in this action does not exceed the sum of two thousand dollars.

2nd. That the defendant is a corporation duly organized under the laws of ——

III. That on the 4th day of November, 1893, at Ouray county aforesaid, the defendant was indebted to one John Lillar, in the sum of nine hundred twenty-two and 80/100 dollars, upon an account for work and labor performed in and about the working and development of the Hidden Treasure mine belonging to the defendant upon a contract express—that said work and labor and material was reasonably worth and the defendant agreed to pay for the same the said sum of $922.80.

IV. That prior to the beginning of this action the said claim and account was, for value, assigned to the plaintiff.

V. That the defendant has not paid the same nor any part thereof.

Wherefore, plaintiff prays judgment for the said sum of $922.80 with interest thereon from the said 4th day of November,
145 1893, and for costs of suit.

(Signed) STORY & STEVENS,
Att'ys for Plaintiff.

(The foregoing complaint was duly verified and endorsed.)

STATE OF COLORADO, } ss:
Ouray County, }

In the County Court in and for the County of Ouray, in the State Aforesaid.

WM. C. FULTON, Plaintiff,
vs.
THE COSMOPOLITAN MINING COMPANY, a Corporation, Defendant. } Undertaking on Attachment.

Whereas the above-named plaintiff has commenced, or is about to commence an action in the county court in and for the county of Ouray, in the State aforesaid, against the above-named defendant,

upon a contract for the direct payment of money, claiming that there is due to the said plaintiff from the said defendant the sum of nine hundred twenty-two and 80/100 dollars, lawful money of the United States, besides interest, and the plaintiff is about to apply for an attachment against the property of the said defendant as security for the satisfaction of any judgment that may be recovered therein.

Now, therefore, we, the undersigned, residents of the county of Ouray, State of Colorado, in consideration of the premises, and of the issuing of said attachment, do jointly and severally undertake in the sum of eighteen hundred and fifty dollars and promise to the effect, that if the said defendant shall recover judgment in said action, or if the said court shall finally decide that the said plaintiff was not entitled to an attachment, the said plaintiff will pay all costs that may be awarded to the said defendant company and all damages
146 which it may sustain by reason of the wrongful suing out of the said attachment, not exceeding the sum of eighteen hundred and fifty dollars.

Dated this 25th day of May A. D. 1895.

W. C. FULTON.
E. H. POWELL.
J. C. MARSH.

(On the back of the foregoing document was the oath as to the worth of the sureties, not filled out, but signed "E. H. Powell" and "J. C. Marsh." The document was also endorsed.)

STATE OF COLORADO, } *ss*:
County of Ouray, }

In the County Court within and for the County of Ouray Aforesaid, the — Term, A. D. 1895.

WILLIAM C. FULTON, Plaintiff,
versus
THE COSMOPOLITAN MINING COMPANY, a Corporation, Defendant.

William C. Fulton of said county, being duly sworn doth depose and say that the defendant The Cosmopolitan Mining Company, against whom the said William C. Fulton is about to sue out an attachment, is indebted to him in a sum not exceeding ten hundred dollars, to wit: the sum of nine hundred twenty-two and 80/100 dollars, and that the said demand is — and unpaid on an express contract, and that the said sum of $922.80 is due from defendant to plaintiff, for work and labor performed by John Lillar, for said defendant at its request; that the said claim was by the said John Lillar for value assigned to the plaintiff; that said sum is *do* on a written order of the agent of said corporation, for the direct and unconditional payment of money; that the defendant is a foreign corporation.

147 (Signed) W. C. FULTON.

Sworn and subscribed to before me, this 25th day of May, A. D. 1895.

ROB'T H. WILSON,
County Judge & Clerk Co. Come.

[SEAL.]

(The foregoing paper was duly endorsed.)

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court within and for the County of Ouray, State of Colorado.

WM. C. FULTON, Plaintiff,
vs.
THE COSMOPOLITAN MINING CO., a Corporation, Defendant. } Writ of Attachment.

The People of the State of Colorado to the sheriff of the said county of Ouray, Greeting:

Whereas the above-entitled action was commenced in the county court in and for the said county of Ouray, in the State of Colorado, by the plaintiff in the said action, to recover from the defendant, The Cosmopolitan Mining Co. a corporation, in the said action, the sum of nine hundred twenty-two and 80/100 dollars, lawful money of the United States, besides interest at the rate of — per cent. per — from the — day of ——, A. D. 189–, and costs of suit; and the necessary affidavit and undertaking herein having been filed as required by law.

Now, we do therefore command you, the said sheriff, that you serve a copy hereof on the above defendant, if *he* be found in your county, and also attach and safely keep all the property of said defendant, The Cosmopolitan Mining Co., a corporation, within your said county, not exempt from execution, or so much thereof as may be sufficient to satisfy the said plaintiff's demand, as above,
148 and in the affidavit herein mentioned, unless the said defendant deposit with you the amount or give you security by an undertaking of at least two sufficient sureties, in an amount sufficient to satisfy such demand, besides costs, or in an amount equal to the value of the property which has been or is about to be attached; in which case you will take such undertaking; and hereof make due and legal service and return.

Witness, Rob't H. Wilson, judge & clerk of said court, and the seal thereof, at Ouray, this 13th day of June, A. D. 1895.

ROB'T H. WILSON,
Judge & Clerk,
By MARY F. WILSON,
Deputy Clerk.

[SEAL.]

STATE OF COLORADO, } ss:
San Miguel County, }

I do hereby certify that I have duly executed the within writ on this 22nd day of June, A. D. 1895, by delivering to J. M. Jardine, a true copy of same, he being the duly authorized agent for the within-named defendant company.

J. C. RUTAN, *Sheriff.*

(The foregoing document was duly endorsed.)

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court.

WILLIAM C. FULTON, Plaintiff,
vs.
THE COSMOPOLITAN MINING COMPANY, a Corporation, Defendant. } Summons.

149 The People of the State of Colorado to The Cosmopolitan Mining Company, a corporation, the defendant above named, Greeting:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the county court of Ouray county, State of Colorado, and answer the complaint therein within twenty days after the service hereof, if served within this county, or, if served out of this county, or by publication, within thirty days after the service hereof, exclusive of the day of service; or judgment by default will be taken against you according to the prayer of the complaint. And if a copy of the complaint in the above-entitled action be not served with this summons, or if the service hereof be made out of this State, then ten days additional to the time hereinbefore specified for appearance and answer will be allowed before the taking of judgment by default as aforesaid.

The said action is brought to recover from you the sum of $922.80 upon an account for work and labor performed by one John Lillar, at your request, and for which you agreed to pay said sum of $922.80 which said account has been for value, assigned to the plaintiff, as will more fully appear from the complaint in said action to which reference is here made, a copy of which is attached hereto.

And you are hereby notified that if you fail to appear and to answer the said complaint as above required, the said plaintiff will take default and judgment against you according to the prayer of the complaint.

Given under my hand and the seal of said court at Ouray in said county, this 13th day of June, A. D. 1895.

ROBT H. WILSON,
Judge and Clerk.

[SEAL.]

MARY F. WILSON,
Deputy Clerk.

STATE OF COLORADO, } ss:
County of San Miguel, }

I do hereby certify that I have duly served the within sum-
150 mons, together with a copy of the complaint in the within-stated action on this 22nd day of June, A. D. 1895, by personally delivering a true copy of said summons, together with a copy of the original complaint in the action therein mentioned, thereto attached, to the within-named defendant, J. M. Jardine he being the duly authorized agent for the within-named defendant company.

J. C. RUTAN, *Sheriff.*

(The foregoing document was duly endorsed.)

THE BEAUMONT, OURAY, COL., *Nov. 4th*, 1893.

On receipt by you pay to John Lillar or order, nine hundred and twenty-two 80/100 $922.80 to Dan L. Golden Ouray.

(Signed) JOHN M. S. EGAN.

Dan Golden please pay the above order of nine hundred & twenty-two & 80/100 dollars to W. C. Fulton and oblige,

(Signed) J. L. LILLAR.

(Endorsed on the back as follows:)

Filed July 26" 1895.

ROB'T H. WILSON,
Judge & Clerk.

(Then follow the default and judgment, which have appeared heretofore in this record as a portion of Exhibit 12.)

STATE OF COLORADO, } ss:
Ouray County, }

The People of the State of Colorado to the sheriff of Ouray county, Greeting:

We command you, that of the lands and tenements, goods and chattels, of The Cosmopolitan Mining Company, defendant, in your county, you cause to be made the sum of one thousand and forty-nine and 90/100 dollars, which W. C. Fulton plaintiff lately in the county court of said Ouray county, at a term thereof begun and
151 held at Ouray in said county, on the 26" day of July, A. D. 1895, recovered against the said defendant, and which by the said court was adjudged to the said plaintiff for his damages by him in his behalf sustained, together with interest upon said judgment from the date of the recovery thereof until the same is paid at the rate of 8 per cent. per annum. And also, the further sum of

fifteen dollars and forty cents, which were adjusted to the said plaintiff for his costs and charges in that behalf expended, whereof the said defendant is convicted, as appears to us of record. And have you these moneys ready to render to the said court for damages for adjustment among the several judgment creditors in proportion to the amount of their respective claims, and costs aforesaid, and make return of this writ, with an indorsement there- in what manner you shall have executed the same, within ninety days from the date hereof.

Witness, Rob't H. Wilson, judge and clerk of said court, and the seal thereof, at Ouray, in said county, this 27 day of July, A. D. 1895.

ROB'T H. WILSON,
Judge & Clerk.

STATE OF COLORADO, } ss:
Ouray County, }

I hereby return the within execution fully satisfied in accordance with my return made on the execution issued in the case of The A. W. Begole Mercantile Company *vs.* The Cosmopolitan Mining Company, this 30th day of September, 1895.

(Signed) MAURICE CORBETT, *Sheriff.*

(The foregoing document was duly endorsed.)

In the Ouray County Court, May Term, A. D. 1895.

No.	Parties.	Action.	Attorneys.
1443	William C. Fulton *vs.* The Cosmopolitan Mining Company.	Attachment on account.	Story & Stevens.

152

Date.	Papers filed, etc.	Plaintiff's costs.			Memoranda.
		Clerk's.	Sheriff's.	Credits.	
1895.					
May 25	To complaint and aff.	37½	.....	.....	Judgment.
	" aff. in attachment	37½			
	" filing & approving bond	112½			
	" appearance of att'y.	25			
	" 2 dockets	40			
	" index	10			
	" fee bill	75			
	By cash pl'ff	.....	.....	500	
June 13	To summons and copy	100			
	" 1 attachment writ	125			
	" 2 copies	60			
July 18	" filing 2 papers	25			
	" " 1 papers	12½			
	" hearing	400			
	" judgment	80			
	" swearing witness	15			
	" making trans. in J. D.	60			
	" default	60			
	" execution & return	250			
	" precipe	12½	1537½		
	By cash to bal.	.....	.....	1040	
1900.					
Oct. 31st	Transcript	976¼	....	976¼	

(Fee Book "C," page 298.)

(Then follows transcript of judgment docket, which has appeared before herein as part of Exhibit 12.)

(All of which was duly certified by the clerk of the county court of Ouray county.)

Mr. PRESTON: Do I understand you to introduce all of these records, everything that is in them?

Mr. HUGHES: All except the affidavit in the Begole case (Plaintiff's Exhibit R).

Mr. PRESTON: To the introduction of each and all of these records we desire to interpose the same objections which were offered to the

introduction of the defaults and judgments in these cases, and
153 the additional objection that the summons and return in each case shows that each and all were served in the county of San Miguel, Colorado, and not in the county of Ouray, Colorado.

The COURT: The objection will be sustained to the offer of the pleadings and judgment in the case of William C. Fulton *v.* Cosmopolitan Mining Company (Defendant's Exhibits 12 and 18). In that case, it simply appears that the defendant is a corporation duly organized under the laws of —. It appears in this case the defendant is a non-resident corporation and there is nothing in the record tending to show that the defendant was doing business in this State.

To which ruling of the court counsel for defendant then and there duly excepted.

The COURT: In the other cases in each of the complaints is the averment that the corporation is a corporation duly incorporated and organized under and by virtue of the laws of the State of Maine; that its principal office in the State of Colorado is at Ouray in said Ouray county. I take it that the maintaining of a principal office there is the being found within the State. The objection will be overruled as to all except the Fulton case.

To which ruling of the court counsel for plaintiff then and there duly excepted.

154 Thereupon, the defendant, to further maintain the issues on his part, offered the following oral testimony:

DAVID R. REED, a witness produced on behalf of the defendant, being duly sworn, in answer to interrogatories propounded to him, testified as follows:

Direct examination by Mr. THOMAS:

Q. Mr. Reed, where do you reside?

A. In Ouray, Colorado.

Q. What is your profession or business?

A. Mining engineer.

Q. Do you know the defendant in this case, Mr. Walsh?

A. I do.

Q. State whether or not you have been in his employ during recent years?

A. I have.

Q. In what capacity?

A. Engineer.

Q. About how long have you acted as engineer for the defendant?

A. Continuously for about five years.

Q. Are you familiar with a group or series of mining claims and mill sites known generally as the Cosmopolitan group?

A. I am.

Q. How long have you known of the claims that are supposed to constitute that group?

A. About twenty-two years.

Q. Have you made a plat recently of the claims that are in controversy here, being the claims of the Cosmopolitan group?

A. I have.

Q. Showing their relations to each other and to other properties?

155 A. Yes, sir.

Q. I show you Defendant's Exhibit 14, and ask you to state what it is and who prepared it.

A. A map showing the location of various claims in Imogene basin, Mt. Sneffles mining district, Ouray county, showing among other things the location of the claims formerly owned by the Cosmopolitan Mining Company. Those claims appear in colors.

Q. What color?

A. Yellow.

Q. Showing their relations to each other?

A. And to the surrounding claims.

Q. These claims bear their appropriate names in their appropriate places, I suppose?

A. They do.

Q. What have you had to do with those claims or any of them since the summer of 1896, Mr. Reed?

A. In what way?

Q. In any way.

A. Well, I have been engaged in surveying claims in that vicinity and various other surveys on the ground and on various claims as shown on the map (Exhibit 14).

Q. State, if you know, in whose possession these claims have been since the summer of 1896?

A. In the possession of Thomas F. Walsh.

Q. Do you know what, if any, work has been done upon these claims or any of them during that time?

156 To which question counsel for plaintiff objected on the ground that it was incompetent, immaterial and irrelevant, and not pertinent to any issue in this case.

Thereupon the court suggested that counsel for defendant, having the witness on the stand, might offer to prove just what said witness will testify to and the matter might come up on the objection to that offer.

Mr. THOMAS: We offer to prove that the defendant in reliance upon the regularity of the judgments heretofore offered in evidence and upon the execution, levy, sale, and conveyance of the property in controversy, and in reliance upon the validity of all the steps necessary for the maintenance of the defendant's title immediately after and continuously since the 16th day of June, 1896—that being the date of this conveyance—entered upon the possession of said premises and began working and developing the same, and has expended thereon large sums of money for the purpose of improving the said property and rendering it valuable as a mining claim, all of which was done with the knowledge, consent, and acquiescence of the plaintiff—I should say here that we expect to prove the consent,

if the court please, by the fact that no step was taken, no notice given, no demand made, and no protest of any sort made against the defendant, but that his possession and improvement of the property from the date mentioned was at all times open and notorious and that in and about the improvement of the property and
157 the development thereof the defendant has, since the 16th day of June, 1896, and prior to the filing of his answer, expended upon said premises for the purpose of improving and developing and making the same valuable, the sum of $128,500, or thereabouts. We further propose to show that it is these expenditures by the defendant which have given to the property in controversy whatever of value it may have at the present time or at the time of the commencement of the suit, and that without such expenditures and development the same would be worthless and of no value. We also expect to show that for the years 1889, 1890, 1891, 1892, 1893, 1894, and 1895, the defendant paid all of the taxes which had heretofore been levied and were due upon the property in question from the plaintiff, both State, county, and local, and also that he has paid the taxes thereon from the said year 1895, continuously down to the present time, and that no offer, demand, or request has been made at any time by the plaintiff to repay these taxes or to pay them to the authorities. This offer is made under the third defense of the defendant. We also propose to show that the work and the improvements mentioned consist both of underground and surface improvements upon the property.

To which offer, counsel for plaintiff objected on the ground
158 that it was incompetent, irrelevant, and immaterial, and not an issue in the case; also as not presenting the elements of estoppel and not being admissible under any other theory.

The COURT: Now do I understand that the consent of the plaintiff is simply to be a matter of inference from the other facts offered to be proved?

Mr. THOMAS: Oh, yes, the offer includes the fact that this work and development was open and notorious and that during that period of time the defendant made no protest or objection and that it had knowledge of our being in possession and working under this judgment and sale.

The COURT: Another element of the offer, I would like to understand also. It is that the plaintiff knew that the defendant believed his title was good under the judgment and sale; is it meant to actually introduce evidence on that fact other than is to be inferred from the notoriety of the possession and the improvements made?

Mr. THOMAS: No, I think not.

Mr. HUGHES: And the personal knowledge that the work was going on——

The COURT: But it is to be inferred from the other facts?

Mr. HUGHES—standing by quietly, saying nothing while the work was going on and the title claimed under these judgments.

159 Thereupon the court sustained the objections.

To which ruling of the court counsel for defendant then and there duly excepted.

Q. I show you Defendant's Exhibit 15, Mr. Reed, and ask you what that represents and who made it?

A. That is a chart made by me representing the Norma mill site, showing the location of one of the buildings erected by Mr. Walsh on that claim.

Q. That being one of the properties of the Cosmopolitan group?

A. It is.

Q. I now show you Defendant's Exhibit 16 and ask what that represents.

A. This is a plat made by me showing the location of the Emily and Gertrude mill sites and the locations of the surface improvements thereon—on the Emily mill site.

Q. I will now show you Defendant's Exhibit 17 and ask you to state what that is.

A. This is a plat of the Gertrude Lode claim showing both surface and underground improvements, the survey being made by me.

Q. Are the various delineations on those four exhibits correct? Made from actual surveys?

A. Made from actual surveys by me.

Thereupon counsel for defendant offered in evidence Exhibits 14, 15, 16, and 17.

To which offer counsel for plaintiff objected on same ground.

160 Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Cross-examination by Mr. PRESTON:

The COURT: What evidence has come from this witness that has not been excluded?

Mr. PRESTON: That Mr. Walsh has been in possession of these claims since the summer of 1896.

The COURT: You may cross-examine on that.

Q. You say Mr. Walsh has been in possession of these claims since 1896?

A. The summer——

Q. The summer of 1896?

A. Late in the fall of 1896.

Q. About what time—identify it as nearly as possible, will you please, Mr. Reed?

A. I could not say whether it was as early as September or as late as October.

Q. About that time?

A. Yes, sir.

Q. Were you there when he first went into possession?

A. I was in the basin more or less, yes, sir.

Q. Well, what was the condition of affairs there when he entered into possession in the fall of 1896, as to what was being done with the claims at the time he entered?

A. I would like to qualify that statement. It was earlier
161 than that; it was in the summer of 1896, it was earlier than September as I now recall it that Mr. Walsh first went in the basin and went on these claims.

Q. How did he go on these claims?

A. He was working upon the claims.

Q. Mining, employing men and all that?

A. Working upon the claims.

Q. How do you know that fact?

A. I saw them.

Q. Was there any one else working there besides the men Mr. Walsh employed?

A. I think not.

Q. Are you sure not?

A. I do not know that they were not.

Q. Well, you were in a position to know if there were other people working there, were you not?

A. You mean on these claims?

Q. Yes, sir.

A. No one that I know of.

Q. No one that you know of. Did you ever know since that time, since the early summer of 1896, of any one working on those claims other than Mr. Walsh's men?

A. I do not know of any others.

Mr. THOMAS: We have a number of other witnesses, if the court please, but the offer includes them as well. Under the ruling of the court we rest; we have no other testimony.

162 *Plaintiff's Rebuttal Testimony.*

Thereupon the plaintiff to further maintain the issues on its part, offered the following evidence in rebuttal.

EXHIBIT R.

STATE OF COLORADO, } ss:
County of Ouray, }

In the County Court Thereof.

THE A. W. BEGOLE MERCANTILE CO., Plaintiff, }
vs. } Motion.
THE COSMOPOLITAN MINING CO., Defendant. }

Come now J. M. Jardine, upon whom papers purporting to be a summons and writ of attachment in the above-entitled cause were served on May 8th, 1895, and respectfully represents to the court:

1st. That he is not, and has not been for several years past, a resident of Ouray county in said State, and therefore could not be an agent of defendant company in accordance with the general laws of this State under the facts alleged in the complaint herein.

2nd. That he has not for years acted as agent of said company defendant, does not consider himself or hold himself out to be such agent and refuses to accept service or do any other act on behalf of said defendant.

Wherefore he moves the court to quash the service of said summons and writ and hold the same for naught.

(Signed) J. M. JARDINE.

163 STATE OF COLORADO, } ss:
San Miguel County, }

Subscribed and sworn to before me this 18th day of May 1895. My commission expires May 16th, 1899.

STEPHEN A. BAILEY,
Notary Public.

(Endorsed on the back as follows:)

STATE OF COLORADO, }
Ouray County. }

In the County Court.

THE A. W. BEGOLE MERC. CO. }
vs. }
THE COSMOPOLITAN MNG. CO. }

Notice to the court that party purporting to have been served was not an agent of def't.

Filed May 27th, 1895.

ROBT H. WILSON,
Judge and Clerk.

Mr. THOMAS: Exhibit R is objected to, if the court please, because it is no way of proving the non-agency of the personal representative, because it is not notice to anybody except possibly the plaintiff in that case (referring to case of which Exhibit R is a portion) of anything that contains; it does not purport to be a statement of facts but of the affiant's understanding of his position; the evidence is incompetent for the purpose of showing that he was not an agent, he having once been appointed and never having been removed in the only way in which, under the statute he could be removed so
164 as to give notice to third persons; because it is incompetent, irrelevant, and a self-serving declaration it is the declaration of the agent furnished for that purpose. We object on the further ground that this is an attempt to collaterally attack the judgment and also to disprove by extraneous evidence the return of the sheriff.

Which objections the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

The COURT: The objection is sustained with the qualification that if you prove the fact and it becomes important to determine whether

some one had notice of that fact, and prove that that person examined and knew the contents of the papers, why, you may introduce it in connection with that.

Thereupon counsel for plaintiff, to further maintain the issues on its part, offered the following oral testimony in rebuttal.

WILLIAM STORY, a witness produced on behalf of the plaintiff being duly sworn, in answer to interrogatories propounded to him, testified as follows:

165 Direct examination by Mr. PRESTON:

Q. Will you state your name, residence, and occupation?

A. William Story; Ouray; attorney-at-law.

Q. Were you one of the counsel for Mr. Thomas F. Walsh in a suit to quiet title brought in the county of Ouray in 1897?

A. I think so—if you will let me see the papers.

Q. The same action referred to as Defendant's Exhibit 13 (shows witness paper)?

A. Yes, sir, I was.

Q. The bill was filed in February, 1897, and the summons was served March 1, 1897, in Ouray county, Colorado, upon J. M. Jardine. Did you file that bill and did you direct upon whom that summons—the sheriff to serve that summons upon Mr. Jardine?

A. I think I did; that is my recollection.

Q. In that bill you state that the defendant—that is, The Cosmopolitan Mining Company—was a corporation organized under the laws of the State of Maine for the purpose, amongst others, of carrying on a mining business in the county of Ouray and State of Colorado, and by certificate dated December 16, 1885, recorded in Book C 1, page 291, on January 21, 1886, the said J. M. Jardine afterwards was, as required by the laws of the State of Colorado, duly appointed as the authorized agent of the defendant company upon whom process might be served. Now, will you please state, at that

166 time whether there were any other agents of the Cosmopolitan Mining Company in the county of Ouray, than John M. Jardine?

To which question counsel for defendant objected on the ground that it is incompetent, immaterial, and irrelevant and does not tend to prove any of the issues in this case.

The COURT: That record was admitted on the theory at least that the corporation consented to be served by serving the particular agent. The other records were admitted on the theory that it sufficiently appeared in the complaints that the corporation was doing business in Colorado. The court admitted that record at once and the others were excluded until the complaints were offered.

Mr. PRESTON: Does your honor exclude this offer?

The COURT: Yes, if I understand that you are trying to prove by this witness that the corporation was not doing business in the State except having a statutory agency.

Mr. PRESTON: Yes.

To which ruling of the court counsel for plaintiff then and there duly excepted.

167 Mr. PRESTON: I offer to prove by this witness that the corporation at the time of the service of summons in this case had no visible office in Ouray county, Colorado; that it had no agents upon whom process could be served, and that it was not engaged in the manual carrying on of the mining business at that time.

The COURT: Your offer is to prove that it had no agent on whom process might be served?

Mr. PRESTON: Well, I do not make it that broad—any other agent than John M. Jardine, the alleged statutory agent.

Mr. HUGHES: Then it is immaterial on the ground that you have offered only to show that there was no other person except Mr. Jardine upon whom process might be served.

Mr. PRESTON: I offer to prove by him that there was no office of any kind of the Cosmopolitan Mining Company in the city of Ouray, at that time, and no agent of any kind except John M. Jardine.

Mr. THOMAS: We object because incompetent and immaterial and because that one agent, Mr. Jardine, the statutory agent, is sufficient.

Which objections the court sustained.

Mr. PRESTON: I withdraw the offer.

168 I offer to prove in lieu of that offer that the Cosmopolitan Mining Company had no office and was not doing business in the county of Ouray at the time of the service of process in the bill to quiet title introduced in evidence, and I make the same offer to prove by this witness that the Cosmopolitan Mining Company had no office and was not doing business in the county of Ouray, at the time service of process was made in the case of William C. Fulton against the Cosmopolitan Mining Company, John Ashenfelter against the Cosmopolitan Mining Company and A. W. Begole Mercantile Company against the Cosmopolitan Mining Company.

Mr. HUGHES: I think, your honor, that is not one of the issues in this case. That is excluded.

Which objection the court overruled.

Mr. THOMAS: Well, if the court please, we were going to show that that offer was much broader than the question to which we objected. We desire to offer this objection to the offer that it may go in the record among other things that this is an attempt to

169 dispute the title of this judgment record by parol testimony, and this is not the proper way to prove things to which the question or the offer relates—that they had no statutory or other agent authorized to receive process.

Which objection the court overruled.

Mr. PRESTON: Do I understand that that ruling applies to the bill to quiet title as well as to the other?

The COURT: It applies to your last offer, and in that offer you embrace matters that I think are pertinent and I cannot exclude the offer as a whole.

Mr. THOMAS: Well, just what part of it does your honor hold good?

The COURT: I do not care to segregate the ruling as to the offer. If I sustain an objection to the offer then if any part of the
170 offer is pertinent testimony, it is error.

To which ruling of the court in overruling the above objections counsel for defendant then and there duly excepted.

Q. Governor, at the time of the service of the process in the suit to quiet title, did the Cosmopolitan Mining Company have any office in the county of Ouray, that you know of?

To which question counsel for defendant objected.

Which objection the court sustained.

To which ruling of the court counsel for plaintiff then and there duly excepted.

Q. Governor, at the time of the service of process—well, I will specify—in April, May, and June, 1895, did the Cosmopolitan Mining Company have any office in the county of Ouray, Colorado?

To which question counsel for defendant objected.

Which objection the court overruled.

To which ruling of the court counsel for defendant then and there duly excepted.

The COURT: I understand these dates refer to the other suits.

Mr. PRESTON: They are purely of the other suits.

A. Will you give me the dates again?

Q. April, May, and June.

A. 1895?

Q. 1895. Those are the months when the process was
171 served in those several attachment suits.

A. Well, I don't know that I can answer that for the reason that at certain seasons of the year I was away from Ouray, and, so far as I know, from the time the Cosmopolitan Mining Company filed its record in the office of the clerk and recorder of Ouray county of the appointment of J. M. Jardine there was no change, visible change, in it that I could see as to their method of doing business.

Q. Well, now, at the time of the appointment of J. M. Jardine what kind of an office did they have?

A. I never knew them to have any office except Mr. Jardine was the agent and that as such agent he was there as their representative, as I understood it, but I never saw an office in Ouray any time. At the time they made the appointment, my recollection at the present time is that was known as the office of the Cosmopolitan Mining Company.

Q. In April, May, and June, 1895 you were president of a bank in Telluride, were you not?

A. I was the president of the First national bank for some years; I will not say just when I parted with the majority of the stock, I

cannot say now positively, but I think I held that office during the year 1895.

Q. Where did John M. Jardine live during those months of 1895?

Thereupon counsel for defendant objected to said question as immaterial and irrelevant.

Which objection the court overruled.

172 To which ruling of the court counsel for defendant then and there duly excepted.

A. J. M. Jardine was at Telluride, I think, during those months.

Q. Governor, Mr. Jardine was in the First national bank there for some years was he not?

Thereupon counsel for defendant objected to said question as immaterial and irrelevant.

Which objection the court overruled.

To which ruling of the court counsel for defendant then and there duly excepted.

A. Yes, without refreshing my memory I could not give you the dates though.

Q. Well, have you anything by which you could refresh your memory?

A. I do not think I have with me. I probably could refresh my memory by taking time.

Q. Can't you remember when Mr. Jardine first became connected with your bank?

To which question counsel for defendant objected on the ground of being immaterial and irrelevant.

Which objection the court overruled.

To which ruling of the court counsel for defendant then and there duly excepted.

173 A. My impression is that Mr. Jardine in 1895, was connected with the bank during those months.

Q. Did you bring the action of William C. Fulton against the Cosmopolitan Mining Company?

A. Well, the firm did—it may have been done——

Q. I will ask you to look at the record.

To which question counsel for defendant objected on the ground that it is immaterial and has reference to a record that is excluded.

The COURT: What is the purpose?

Mr. PRESTON: This is to refresh his memory as to where Mr. Jardine lived in 1895.

The COURT: You may use it for that purpose.

A. I drew none of those papers and had nothing to do with them.

Q. Now, can't you state as a matter of fact, one way or the other, was or was not John M. Jardine a resident of Telluride in April, May, and June, 1895?

To which question counsel for defendant objected as being immaterial and irrelevant.

Which objection the court overruled.

To which ruling of the court counsel for defendant then and there duly excepted.

A. He was in the bank at that time.

174 Q. In what bank?

A. The First national.

Q. Where?

A. At Telluride.

Q. In what capacity?

A. He was there acting as book-keeper.

Q. How long had he been there at that time approximately?

To which question counsel for defendant objected as immaterial. Which objection the court overruled.

To which ruling of the court counsel for defendant then and there duly excepted.

A. Mr. Preston, I cannot answer that with any certainty at all.

Q. Well, had he or had he not been there for some time at that time in 1895?

A. My recollection is that he had been there for some months at that time. Now, just how long I could not state.

Q. Did you ever go to his house at Telluride?

A. Yes, sir.

Q. He had his family there?

A. His family was there at the time I went to his house.

Q. Can you tell about when that was?

A. No, I cannot answer whether that was before or after the time you speak of.

Q. Well, it was about then, was it not?

A. My impression is that the time I went to Mr. Jardine's house was later.

Q. You live in Ouray?

A. Yes, sir.

Q. Do you know when J. M. Jardine lived in Ouray?

To which question counsel for defendant objected as incompetent, immaterial, and irrelevant.

175 Which objection the court overruled.

To which ruling of the court counsel for defendant then and there duly excepted.

A. Well, Mr. Jardine would go away from Ouray and would return to Ouray and I cannot state definitely as to when he went away nor the different times when he returned.

Q. Well, now, assuming that he went away and that he took up a residence at Telluride at the same time, which you cannot tell exactly, after the taking up of that residence, did he ever return to live in Ouray?

To which question counsel for defendant objected as incompetent, immaterial, and irrelevant.

Which objection the court overruled.

To which ruling of the court counsel for defendant then and there duly excepted.

A. The question is as to whether he returned to Ouray after he worked——

Q. After he worked in the bank?

A. (Continuing:)—worked in the bank there. My impression is that he did not, but he was back and forth quite often and that leaves me in some doubt. My impression is that he did not take up a residence with his family.

Q. Well, he was the book-keeper there all the time he was
176 there, was he not?

A. Book-keeper and assistant cashier.

Q. And he remained there for some years?

A. He did.

Q. And he had to be at his place of business every day, didn't he practically?

A. Practically, he was there very largely at his place of business so far as I know.

Q. And how far is it according to the traveled route from Ouray to Telluride—I do not mean through tunnels?

A. It is called about fourteen miles by trail and fifty-five miles by railroad.

Q. Was he a married man?

A. Yes, I understood so.

Q. Have children?

A. He had a wife and children.

Q. And they were in Telluride at the same time, were they not?

A. They were there part of the time; part of the time they were not.

Cross-examination by Mr. THOMAS:

Q. How far were the mines, Mr. Story, from the town of Ouray?

A. Which mines do you speak of?

Q. The mines that are in controversy here and that once belonged to the Cosmopolitan Mining Company. Take the Hidden Treasure for example; that was the principal mine, was it not, at that time?

A. Well, I don't know, Governor Thomas, which was the principal mine. The mines as I understand them are up there at
177 Imogene basin and near where the Camp Bird workings were. Assuming that to be correct, I think about nine miles from Ouray and about six miles from Telluride.

Q. How far from Telluride?

A. About six or seven miles.

MAURICE CORBETT, a witness produced on behalf of the plaintiff, being duly sworn, in answer to interrogatories propounded to him, testified as follows:

Direct examination by Mr. PRESTON:

Q. State your name and residence.
A. Maurice Corbett; Ouray, Colorado.
Q. Were you ever sheriff of that county?
A. Yes, sir.
Q. Were you sheriff of that county in the year of 1895?
A. Yes, sir.
Q. I hand you a certified copy of a return purporting to be signed by you in the case of A. W. Begole Mercantile *Mercantile* Company against the Cosmopolitan Mining Company (Defendant's Exhibit 19) and ask you if you served and returned such a return in that case?

To which question counsel for defendant objected as the return indicates verity and it is evidently a condition of the return.
178 Which objection the court overruled.
To which ruling of the court counsel for defendant then and there duly excepted.

A. Yes, I think I served such a writ as that.
Q. In that return you state that you have been unable to make service of the within writ on the within-named defendant?
A. Yes, sir.
Q. There being no person within Ouray county upon whom process might be served?
A. Yes, sir.
Q. What search did you make for any one in that county upon whom process might be served?

To which question counsel for defendant objected.
Which objection the court overruled.
To which ruling of the court counsel for defendant then and there duly excepted.

A. I was informed that the agent called for was at Telluride at that time and was not in my county.
Q. Was there any one there that you knew of?
A. No one that I knew of.
Q. Was there any office there that you know of?
A. No, sir; they never had an office that I know of.

To all of which questions counsel for defendant objected saying "all of these questions."
179 Which objection the court overruled.
To which ruling of the court counsel for defendant then and there duly excepted.

Q. How long have you resided in that county?
A. About eighteen years.

Q. Did you go up to the mine?
A. I have been at the mine but was not at that time.
Q. Well, had you been at the mine about that time?
A. I was there later afterwards, but not at that time I wasn't there.
Q. Later, you say?
A. Yes; it was later.
Q. How much later?
A. I cannot just exactly state the time, but it was some time before the sale took place—of the property.
Q. Do you know if there were any persons working there at that time?
A. There were none.
Q. For how long before that had there been any persons working there that you know of?
A. Well, I don't know.
Q. Some time was it not?
A. Some time; yes, sir.

Mr. HUGHES: We object to that, your honor, if the witness says he don't know, for counsel to say "some time."
Mr. PRESTON: Well probably you are right, Mr. Hughes.

Q. Do you know who the last person was that had been
180 working at that mine?
A. No, sir; I do not.
Q. Don't you know who their last foreman was?
A. Mr. Golden was the last foreman I knew of.
Q. Was he there at that time?
A. When I was up there?
Q. Yes.
A. No, sir.
Q. Was he there at the time you served this process?
A. No, sir.
Q. How large a place was Ouray in 1895?

To which question counsel for defendant objected as incompetent, immaterial, and irrelevant.
Which objection the court overruled.
To which ruling of the court counsel for defendant then and there duly excepted.

A. Well, really I cannot say what the population of Ouray was at that time; if I knew at that time I have forgotten.
Q. Well, about how large—you know approximately?
A. I think in 1895 the county counted somewhere about 1800 votes; any closer than that I cannot tell you, and what the population of the town was I have no idea about that now.
Q. Was it a place of 5,000 people at that time?
A. No, sir; I do not think it was.
Q. You don't think it was?
A. No.
Q. About 3,500?

A. I think that would be about as near as I could guess it.

181 Q. About 3,500 people?

A. It might not be quite that much.

Q. When you went there were there any other people there at the mine other than you and your party?

A. There was no one at the Hidden Treasure.

Q. At the Hidden Treasure or any of those claims?

A. There was no one there at that time—that is around the property—that I knew.

Q. "That you knew"—what do you mean by that?

A. That is, to meet any one there that I knew.

Q. You didn't see any one there?

A. No; I met other parties on the road, but whether they were connected with the workings there I don't know.

Cross-examination by Mr. THOMAS:

Q. You say the last person in charge of the property was named Golden?

A. Yes, sir; that is, that I knew of.

Q. That you knew of?

A. Yes, sir.

Q. When was that?

A. That was some time previous to the beginning of these suits.

Q. About how long?

A. Well, Mr. Golden left some time in the fall and this was the next summer that I went up there.

Q. What is the condition of the country there in the winter time as to the ability to get to the mine?

182 A. Well, I think it is very bad.

Q. On account of what?

A. Oh, I never attempted to go there in the winter time.

Q. On account of what?

A. Snow.

Q. Snow?

A. Yes, sir.

Q. What time in 1895 or along there—what time of the year were these claims generally inaccessible?

A. Inaccessible?

Q. Yes, or unworkable on account of snow.

A. If there is a crew of men there they keep the trail open.

183 Q. Well, in this year, 1895, was there a crew of men up there anywhere to keep the trail open?

A. Well, when I was there it was in the summer season.

Q. In the winter of 1895?

A. If there was any one there I do not know.

Q. About what time did Mr. Golden leave?

A. I cannot exactly say; I remember seeing him leave there but just what time he left I cannot say.

Q. Now, during the times, Mr. Corbett, that these mines were being worked was there any office of the company downtown, down in Ouray, that you know anything about?

A. No, sir.

Q. So that there was just as much of an office there in June, 1895,—May and June, 1895,—as any time before?

A. Yes, as far as I know there was.

183 Q. Did you know Mr. Golden?

A. Yes, sir.

Q. There were a number of creditors of the company in and around Ouray, were there not, after Mr. Golden left?

To which question counsel for plaintiff objected as incompetent, immaterial, irrelevant, and improper cross-examination.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Q. I will put the question in another form and do not answer it until counsel can object. Do you know of any unsettled claims or accounts which were left unsettled by the company after Mr. Golden's departure in the fall of 1894?

To which question counsel for plaintiff objected as incompetent, immaterial, irrelevant, improper cross-examination and calling for a purely legal conclusion from the witness.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Q. Mr. Corbett, I show you what purports to be a transcript of the record of the case of Daniel L. Golden against the Cosmopolitan Mining Company to recover the sum of $1,189.60 for a bal-

184 ance due for work from him, and show you the writ of attachment or a certified copy of the writ of attachment, which you served in that case. I will ask you if you served the writ in that case?

To which question counsel for plaintiff objected as incompetent, immaterial, irrelevant, and improper cross-examination.

Which objection the court overruled.

To which ruling of the court counsel for plaintiff then and there duly excepted.

A. Yes; I made such a levy.

Q. You made that levy?

A. Yes, sir.

Q. You made the levy in the case to which Mr. Preston called your attention?

To which question counsel for plaintiff objected as incompetent, immaterial, irrelevant, and improper cross-examination, and also that the levy will show for itself.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Q. How long had you lived, Mr. Corbett, in Ouray county prior to the time when these attachment suits were brought?

A. About twelve years.

185 Q. About twelve years?

A. Yes, sir; eleven or twelve years.

Q. Eleven or twelve years?

A. I have been there about eighteen years.

Q. Do you know anything about how extensively the mines of the Cosmopolitan Mining Company were worked or developed during that time?

A. No, sir; I do not.

Q. You have no information in regard to that one way or the other?

A. No, sir; I have not.

Q. You do not know who was at work on the mine, nor when they were at work on the mine, do you?

A. No, sir; if I did I have forgotten who they were.

Q. So far as you personally know, there might have been men at work upon that mine, upon those mines, or some of them—after Mr. Golden left, might there not?

A. There might have been.

Q. As to that you have no knowledge one way or the other?

A. No, sir; I have no knowledge one way or the other.

And the above and foregoing was all the evidence offered or received at the trial of said cause by or for either plaintiff or defendant.

Thereupon the defendant by his counsel, made the following motion.

186 Mr. THOMAS: We desire to move to strike out the testimony elicited by the plaintiff from the witnesses Story and Corbett upon the ground that, as it stands, it neither proves nor tends to prove anything; that the testimony merely goes to show—giving it the best construction the plaintiff can ask for—that in the months of April, May, and June there was no active work so far as known, witnesses being ignorant as to what was actually going on at the mine and it being due to them to show the actual facts; also because the testimony sought to be elicited from these witnesses does not establish any positive fact with reference to the issues in the case; also because that testimony neither proves nor tends to prove that the plaintiff company was not doing business in Ouray county at the time and before the time of the commencement of these suits; also that the testimony neither proves nor tends to prove that any suspension of work at that time was a permanent suspension or a permanent cessation of doing business in the State or in the county; also the fact that no office existed in the town neither proves nor tends to prove that the company was not developing the mines which were situated some distance from the town; and also the mere fact if it be a fact, that the agent had moved to the adjoining county does not in any-

wise cancel or revoke the authority conferred upon him by the appointment of the plaintiff company, there being nothing in the statute and nothing in the law which provides for or would
187 countenance the proposition that he was required to live in the county under his appointment or that his removal from the county *ipso facto* or otherwise would affect his appointment. It does not appear either from the testimony of these witnesses or otherwise that the authority or agency of Mr. Jardine has ever been revoked; and also that, even conceding for the sake of argument that the lapse of time between his appointment and the time of the commencement of this action would give rise to any presumption to that effect, there is no evidence going to show that the defendant here or that the plaintiffs in the suits had any notice whatever of the revocation of authority.

The COURT: I understand then, that it is contended that there is no part of this property that stands in any different position from the balance of it.

Mr. PRESTON: Yes, the Norma mill site and the Yellow Rose——

The COURT: Yes, but does any part of the residue of the property stand in any different position?

Mr. THOMAS: Of course, we move, if your honor please, for instruction on the motion to strike out this testimony, and that the jury be instructed under the testimony as offered and received by the court that a verdict should be returned for the defendant.

The COURT: The court will not strike out the testimony but will instruct in view of the testimony.

188 To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for plaintiff asked for a directed verdict, offering to state the specific ground upon which same was asked, but the court said that a general motion would cover every ground upon which a verdict might be directed.

Thereupon counsel for plaintiff made the following request for instruction to the jury, which instruction the court refused to give, viz: That the jury upon the evidence submitted should find the issues joined for the plaintiff except as to the Norma mill site and the Yellow Rose mill site.

To which action of the court in refusing to give said instruction the plaintiff by its counsel then and there duly excepted.

Thereupon the court of its own motion instructed the jury as follows:

The COURT: Gentlemen of the jury, in the view the court takes of this case, it becomes a question of law, and the court will instruct you to find a verdict in favor of the defendant and that the defendant is entitled to possession of the demanded premises.

To the giving of which instruction counsel for plaintiff then and there duly objected and excepted.

Thereupon the jury, without retiring from the room, returned into court the following verdict:

189 We, the jury in the above-entitled cause, find the issues herein joined in favor of the defendant, and that he is entitled to the possession of the demanded premises.

(Signed) GEORGE W. THOMPSON, *Foreman.*

To which verdict plaintiff, by its counsel, then and there objected and duly excepted.

Thereafter, and on the 21st day of June, A. D. 1902, came the plaintiff by its counsel and filed its motion to set aside the verdict of the jury herein and for a new trial, which said motion is in words and figures as follows, to wit:

Now comes The Cosmopolitan Mining Company, the plaintiff herein by its attorneys, and moves the court to grant it a new trial of the issues herein for the following reasons, to wit:

1. Because the court erred in admitting in evidence over the objection of the plaintiff the sheriff's deed, and to which ruling the plaintiff then and there excepted.

2. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 1, and to which ruling the plaintiff then and there excepted.

3. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 2, and to which ruling the plaintiff then and there excepted.

4. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 3, and to which ruling the plaintiff then and there excepted.

5. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 4, and to which ruling the plaintiff then and there excepted.

6. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 5, and to which ruling the plaintiff then and there excepted.

190 7. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 6, and to which ruling the plaintiff then and there excepted.

8. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 7, and to which ruling the plaintiff then and there excepted.

9. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 8, and to which ruling the plaintiff then and there excepted.

10. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 9, and to which ruling the plaintiff then and there excepted.

11. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 10, and to which ruling, the plaintiff then and there excepted.

12. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 11, and to which ruling the plaintiff then and there excepted.

13. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 12, and to which ruling the plaintiff then and there excepted.

14. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 13, and to which ruling the plaintiff then and there excepted.

15. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 14, and to which ruling the plaintiff then and there excepted.

16. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 15, and to which ruling the plaintiff then and there excepted.

17. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 16, and to which ruling the plaintiff then and there excepted.

18. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 17, and to
191 which ruling the plaintiff then and there excepted.

19. Because the court erred in admitting in evidence over the objection of the plaintiff the Defendant's Exhibit 18, and to which ruling the plaintiff then and there excepted.

20. Because the court erred in refusing to rule as a matter of law that the plaintiff was entitled to recover the demanded premises except the Norma mill site and the Yellow Rose mill site and directing a verdict for the plaintiff as duly requested, and to which ruling the plaintiff then and there excepted.

21. Because the court erred in directing the jury to find a verdict for the defendant for the possession of all of the demanded lode claims and mill sites, and to which ruling the plaintiff then and there excepted.

22. Because the court erred in directing the jury to find a verdict for the defendant for the Norma Lode claim, and to which ruling the plaintiff then and there excepted.

23. Because the court erred in accepting and receiving the verdict of the jury rendered herein, and to which ruling the plaintiff then and there excepted.

24. Because the verdict is contrary to the law.

25. Because the verdict is contrary to the evidence.

26. Because the court erred in refusing to permit the plaintiff to introduce in evidence the paper purporting to be a motion or affidavit and signed by J. M. Jardine, and to which ruling the plaintiff then and there excepted.

27. Because the court erred in refusing to permit the plaintiff to prove by the witness Story that in the year 1897, the Cosmopolitan Mining Company had no office of any kind in the city of Ouray, and State of Colorado, and to which ruling the plaintiff then and there excepted.

28. Because the court erred in refusing to permit the plaintiff to prove by the witness Story that the Cosmopolitan Mining Company had no agent or officer in the city and county of Ouray and State

of Colorado in the year 1897, and to which ruling the plain-
192 tiff then and there excepted.

29. Because the court erred in refusing to permit the plaintiff to prove by the witness Story that the Cosmopolitan Mining Company was not doing any business in the State of Colorado in the year 1897, and to which ruling the plaintiff then and there excepted.

30. Because the court erred in refusing to permit the plaintiff to prove by the witness Story that the Cosmopolitan Mining Company was not doing any business in the county of Ouray during the year 1897.

(Signed) HURLBURT, JONES & CABOT,
" PERRY & BLISS,
" GEO. C. PRESTON,
Attorneys for Plaintiff.

Thereafter and on the 23rd day of June, A. D. 1902, came the plaintiff by its counsel, and the defendant, by his counsel, and argued before the court the said motion for a new trial, which motion the court then and there denied and ordered judgment to be entered upon the verdict herein.

To the denying of which motion, as well as to the order for judgment, plaintiff by its counsel then and there objected and duly excepted.

Thereupon and on the 23rd day of June, A. D. 1902, the court entered judgment upon the verdict of the jury in favor of the defendant and against the plaintiff.

To the entry of which said judgment the plaintiff by its counsel then and — objected and duly excepted and prayed to be
193 allowed a writ of error to the Supreme Court of the United States.

And inasmuch as the foregoing matters do not otherwise sufficiently appear of record, the plaintiff now here tenders its bill of exceptions and prays that the same may be signed, sealed, and made a part of the record; which is done accordingly this 15th day of August A. D. 1902.

J. A. MARSHALL, [SEAL.]
District Judge.

Approved:
CHARLES J. HUGHES, JR.,
Counsel for Defendant.

Approved,
C. S. THOMAS,
Of Counsel for Defendant.

(Endorsed:) No. 4107.—United States of America, district of Colorado.—In the circuit court.—Cosmopolitan Mining Company *v.* Thomas F. Walsh.—Bill of exceptions.—Filed Aug. 18, 1902, Robert Bailey, clerk.

Know all men by these presents, that we, the Cosmopolitan Mining Company, a corporation duly organized and existing under the laws of the State of Maine, as principal, and the Fidelity and Deposit Company of Maryland, a corporation duly organized
194 and existing under the laws of the State of Maryland, as surety, are held and firmly bound unto Thomas F. Walsh, in the full and just sum of five hundred (500) dollars to be paid to the said Thomas F. Walsh, his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with out seals and dated this 11th day of August, in the year of our Lord one thousand nine hundred and two.

Whereas, lately at the November term, A. D. 1902, of the circuit court of the United States, for the district of Colorado in a suit depending in said court, between the above-bounden Cosmopolitan Mining Company as plaintiff and the said Thomas F. Walsh as defendant, a judgment was rendered against the said Cosmopolitan Mining Company and the said Cosmopolitan Mining Company having obtained a writ of error to the Supreme Court of the United States and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Thomas F. Walsh citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said Cosmopolitan Mining Company shall prosecute said writ of error to effect, and answer all damages and costs if it fail to
195 make its plea good, then the above obligation to be void; else to remain in full force and virtue.

COSMOPOLITAN MINING COMPANY, [SEAL.]
By JOHN A. PERRY, *Its Attorney-in-fact.* [SEAL.]
FIDELITY & DEPOSIT COMPANY
OF MARYLAND, [SEAL.]
By EDWARD F. BISHOP, *Member of Local Board.*

[Seal of F. & D. Co.]

Sealed and delivered in presence of—
Attest: WM. G. MAITLAND,
General Agent.

Approved by
J. A. MARSHALL,
U. S. District Judge for the District of Utah, Assigned to Hold the Circuit Court of the United States for the District of Colorado.

(Endorsed:) No. 4107.—United States circuit court, district of Colorado.—Cosmopolitan Mining Co. *vs.* Thomas F. Walsh.—Bond on writ of error.—Filed Aug. 18, 1902, Robert Bailey, clerk.

196 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Colorado, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Cosmopolitan Mining Company, plaintiff in error, and Thomas F. Walsh, defendant in error a manifest error hath happened, to the great damage of the said Cosmopolitan Mining Company as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 15th day of August, in the year of our Lord one thousand nine hundred and two.

[Seal United States Circuit Court, District of Colorado.]

ROBERT BAILEY,
Clerk United States Circuit Court, District of Colorado.

Allowed by—
J. A. MARSHALL,
U. S. District Judge for the District of Utah, Assigned to Hold Circuit Court of the United States for the District of Colorado.

196½ UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

In obedience to the command of the within writ, I herewith transmit to the honorable, the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In testimony whereof I hereunto subscribe my name, and affix the seal of the circuit court of the United States for the district of Colorado, at Denver in said district, this 15th day of September, A. D. 1902.

[Seal United States Circuit Court, District of Colorado.]

ROBERT BAILEY, *Clerk,*
By CHARLES W. BISHOP,
Deputy Clerk.

[Endorsed:] No. 4107 United States circuit court, district of Colorado. Cosmopolitan Mining Co. *vs.* Thomas F. Walsh Writ of error Filed Aug. 18 1902 Robert Bailey clerk.

197 UNITED STATES OF AMERICA, *ss:*

To Thomas F. Walsh, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the district of Colorado wherein Cosmopolitan Mining Company — plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable John A. Marshall, U. S. district judge for the district of Utah assigned to hold the circuit court of the United States for the district of Colorado this 15th day of August, in the year of our Lord one thousand nine hundred and two.

J. A. MARSHALL,
U. S. District Judge for the District of Utah, Assigned to Hold Circuit Court of the United States for the District of Colorado.

[Endorsed:] No. 4107 U. S. circuit court, district of Colorado. Cosmopolitan Mining Co *vs.* Thomas F. Walsh Citation Filed Aug. 18 1902 Robert Bailey clerk.

198 UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

I, Robert Bailey, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing pages numbered from one (1) to one hundred and ninety-five (195) both inclusive, to be a true, perfect, and complete transcript and copy of the record and proceedings, and of all thereof, heretofore filed or entered of record in said court, and in a certain cause lately in said court pending wherein Cosmopolitan Mining Company was plaintiff and Thomas F. Walsh was defendant, as fully and completely as the same still remain on file and of record in my office at Denver.

In testimony to the above, I do hereunto sign my name and affix the seal of said court, at Denver in said district, this 15th day of September, A. D. 1902.

[Seal United States Circuit Court, District of Colorado.]

ROBERT BAILEY, *Clerk,*
By CHARLES W. BISHOP,
Deputy Clerk.

Endorsed on cover: File No. 18,675. Colorado C. C. U. S. Term No. 447. Cosmopolitan Mining Company, plaintiff in error, *vs.* Thomas F. Walsh. Filed October 2nd, 1902.

Pleas in the Circuit Court of the United States for the District of Colorado, Sitting at Denver.

Be it remembered, that heretofore, and on, to-wit, the twenty-third day of January, A. D. 1902, came C. M. Bliss, Esquire, attorney for plaintiff, and filed in said court and in a certain cause in said court then pending, wherein The Cosmopolitan Mining Company was plaintiff, and Thomas F. Walsh was defendant, a certain stipulation. And the said stipulation is in words and figures as follows, to-wit:—

UNITED STATES OF AMERICA, *State and District of Colorado,* } *ss:*

In the Circuit Court of the United States for the District of Colorado.

THE COSMOPOLITAN MINING COMPANY, Plaintiff,
vs.
THOMAS F. WALSH, Defendant. } Stipulation.

It is hereby stipulated and agreed by and between the parties hereto that at the time of the filing of this action the property involved exceeded two thousand dollars in value.

PERRY & BLISS,
GEO. C. PRESTON,
Attorneys for Plaintiff.
CHARLES J. HUGHES, JR.,
Attorneys for Defendant.

(Endorsed:) No. 4107 (law) In the U. S. circuit court, district of Colorado. Cosmopolitan Mining Company, plaintiff *vs.* Thomas F. Walsh defendant. Stipulation as to value of property involved. Filed Jan. 23, 1902. Robert Bailey, clerk.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the United States Circuit Court for the District of Colorado.

COSMOPOLITAN MINING COMPANY, Plaintiff,
vs.
THOMAS F. WALSH, Defendant.

The clerk will make transcript for Supreme Court of the United States, consisting of certified copies of the following files and records, viz: The complaint, the answer, the replication, the amended repli-

cation, the stipulation as to value, the bill of exceptions, the assignment of errors, the petition for writ of error, the judge's certificate, the writ of error, the supersedeas bond, the citation and return, all the orders of the court, and the judgment.

PERRY AND BLISS,
GEORGE C. PRESTON,
Attorneys for Plaintiff.

To Robert Bailey, clerk, Denver, Colorado, —— —, 19–.

(Endorsed:) No. 4107. United States circuit court, for the district of Colorado. Cosmopolitan Mining Company *vs.* Thomas F. Walsh, Præcipe for transcript U. S. Supreme Court. Filed Aug. 18, 1902, Robert Bailey, clerk. Perry & Bliss and Geo. C. Preston, attorneys for plaintiff.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

I, Robert Bailey, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of stipulation and præcipe for transcript heretofore had and filed in said court, and in a certain cause in said court pending wherein The Cosmopolitan Mining Company was plaintiff and Thomas F. Walsh was defendant, as fully and completely as the same still remain on file in my office, at Denver.

In testimony to the above, I do hereunto sign my name and affix the seal of said court at the city and county of Denver in said district, this twenty-sixth day of August, A. D. 1903.

[Seal United States Circuit Court, District of Colorado.]

ROBERT BAILEY, *Clerk,*
By —— ——, *Deputy Clerk.*

In the Supreme Court of the United States, October Term, 1902.

COSMOPOLITAN MINING COMPANY, Plaintiff in Error, *vs.* THOMAS F. WALSH, Defendant in Error.	No. 447. (18675.)	Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled action that copies of the præcipe and stipulation as to the value of the property involved in this action, duly certified by the clerk of the circuit court of the United States in and for the

district of Colorado, may be filed and made a part of the transcript of record herein, said præcipe and stipulation being a part of the record in this case in said circuit court.

WILLIAM H. MOODY,
Attorney for Plaintiff in Error.
CHARLES S. THOMAS,
Attorney for Defendant in Error.

[Endorsed:] File No. 18,675. Supreme Court U. S. October term, 1903. Term No. 134 Cosmopolitan Mining Co., pl'ff in error, *vs.* Thomas F. Walsh. Stipulation of counsel and addition to record. Filed Sept. 15th, 1903.